SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 499

THE UNITED STATES, APPELLANT

vs.

BALTIMORE & OHIO RAILROAD COMPANY

APPEAL FROM THE COURT OF CLAIMS

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1 The Court of Claims of the United States

BALTIMORE & OHIO RAILROAD COMPANY
vs.
THE UNITED STATES. } No. B–73.

I. *History of proceedings*

On April 21, 1922, the plaintiff filed its original petition.
On June 21, 1922, a general traverse was entered under rule 34.
On April 9, 1923, by leave of court, the plaintiff filed its amended petition.

II. *Argument and submission*

On December 3, 1924, this case was argued and submitted on merits by Messrs. John F. McCarron and George E. Hamilton, for the plaintiff, and by Messrs. A. A. McLaughlin and L. R. Mehlinger, for the defendant.

2 III. *Order of court entered January 5, 1925*

It is ordered by the court, this 5th day of January, 1925, that this case be, and it is, remanded, to enable the plaintiff, if it so desires, to file an amended petition.

MEMORANDUM

It appears in the amended petition filed April 9, 1923, that the transportation bills, copies of which are attached to the petition, were for services rendered in 1918 and 1919, during which time the court knows the services were rendered by the Railroad Administration under the control of the Director General of Railroads. These revenues by statute belong to the United States. If the plaintiff's case justifies an action because of deductions from corporate bills for services rendered prior to the Railroad Administration the petition should state the facts. The facts relied upon must sustain the allegations of the petition.

3 IV. *Amended petition*

(Filed January 13, 1925)

To the Honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully shows unto your honors the following facts:

1. Petitioner is a corporation organized under the laws of the State of Maryland and operates and at the times hereinafter stated did operate a system of railroads in interstate commerce in the United States.

2. During the years 1916 and 1917 the plaintiff, at the re-
4 quest of the proper officers of the United States Army, fur-

nished transportation to the United States in connection with movements of United States troops to the Mexican border in 1916 and 1917 as set forth in transportation bills referred to in Auditor for the War Department's settlement certificates. Said Auditor for the War Department's settlement certificates are hereafter referred to by date and number. The troops were transported by plaintiff at the rates due under the interterritorial military agreement of July 1, 1916, and the interterritorial military arrangement effective January 1, 1917, that had been entered into between plaintiff and the United States. Plaintiff was paid the correct amount due it under said interterritorial military agreements by the Quartermaster's Department of the United States Army for the transportation of the said troops to the Mexican border in 1916 and 1917.

3. Subsequent to the payment by the Quartermaster's Department to plaintiff of the correct amount due it for the transportation of the troops as set forth in paragraph 2, the Auditor for the War Department, under his settlement certificates at various dates and by numbers hereinafter set forth in summary, held that overpayments had been made by the United States to plaintiff in transportation bills which are set forth in said Auditor for the War Department's settlement certificates covering movements of the said United States troops to the Mexican border in 1916 and 1917 by plaintiff, on account of a cheaper fare constructed by said Auditor for the War Department in using combination of certain fares via Shreveport, Louisiana, and said deductions made by said Auditor for the War Department are contained in his numbered settlement certificates in the following summary:

5

Item No.	Date	Auditor's certificate	Deducted by auditor	Add supplemental bills disallowed by auditor	Certificate of disallowance	Deduct item not applying on this claim	Total
1	July 9, 1918	32920	$8,486.75				$8,486.75
2	July 5, 1918	32876	789.95				789.95
3	July 5, 1918	32878	128.57				128.57
4	Sept. 6, 1918	33577	4,445.67				4,445.67
5	Sept. 13, 1918	33823	25.00				25.00
6	Sept. 30, 1918	34464	667.44				667.44
7	Sept. 30, 1918	34462	78.12				78.12
8	Sept. 30, 1918	34460	1,783.75				1,783.75
9	Oct. 10, 1918	34686	40.80				40.80
10	Sept. 30, 1918	34466	16.33				16.33
11	Oct. 24, 1918	34974	223.32				223.32
12	Dec. 20, 1918	36004	340.86	$391.69	33131		732.55
13	Jan. 4, 1919	36296	951.29			$7.93	943.36
14	Feb. 14, 1919	37557	157.56				157.56
15	June 26, 1919	41834	152.60			7.88	144.72
16	Feb. 19, 1919	37707	54.78				54.78
17	Mar. 29, 1919	39025	60.80				60.80
18	Mar. 26, 1919	38871	474.02			42.16	431.86
19	Mar. 19, 1919	38511	331.76				331.76
20	Mar. 19, 1919	38509	345.71			14.35	331.36
21	Mar. 20, 1919	38532	207.48	185.64	34589		393.12
22	June 27, 1919	41805	490.96				490.96
23	July 26, 1919	42983	38.93			13.58	25.35
24	Aug. 2, 1919	43235	686.00	1,839.82	39878		2,525.82
			20,978.45	2,417.15		85.90	23,309.70

6 In the aforesaid summary, petitioner has included a total of $2,417.15, set forth in supplemental bills 33076, 34295, and 34078, which it contends are due it and which it rendered to the War Department for November, 1916, and the year 1917, but which were disallowed by the Auditor for the War Department in his settlement certificates, as set forth in above summary. The amount of $85.90 set forth in summary represents differences on five items and is not involved in this claim.

The total amount deducted and disallowed by the Auditor for the War Department is shown by the aforesaid summary to be $23,309.70, which is part of the amount of petitioner's claim.

4. The Auditor for the War Department deducted the sum of $20,892.55, as set forth in his numbered settlement certificates in paragraph 3, from original transportation bills of the Baltimore and Ohio United States Railroad Administration rendered by it to the War Department for the years 1918 and 1919 and numbered 51160, 51161, 51163, 51166, 51167, 51222, 51223, 51228, 51256, 51257, 51258, 51184, 51203, 51734, 51792, 52180, 52191, 52224, 52271, 52304, 53078, 53895, 88/5273, 89/5396, 88/5370, 810/5003, 810/5164, 811/5002, 811/5004, 811/5005, 811/5026, 91/5042, 94/5007, 94/5133, and the said amount of $20,892.55 was charged back to the Baltimore and Ohio Railroad Company corporate account by the Director General of Railroads by means of a Federal journal entry made in pursuance of General Order No. 66 and Accounting Circular 152 of the United States Railroad Administration, and the said amount of $20,892.55 charged to plaintiff was paid by plaintiff to the Director General of Railroads.

7 5. Under date of May 13, 1919, the Baltimore and Ohio United States Railroad Administration appealed to the Comptroller of the Treasury from the decision of the Auditor for the War Department's settlement certificate No. 34462, heretofore set forth in summary of paragraph two of this petition, and in said appeal stated in part as follows:

"The Auditor for the War Department claims a net fare of $27.95 figured as follows: Chattanooga, San Antonio, fare divides mileage prorate over Shreveport first out 50 cents—Vicksburg ferry on 607 vs. 405 miles, subdividing east over Meridian and Vicksburg out 50 cents, ferry at Vicksburg on 296 vs. 140 vs. 171 miles.

"The method used by the Auditor for the War Department is not in accordance with military arrangements, and therefore it appears that charges as originally rendered are correct, and you are respectfully requested to instruct the auditor to have settlement made on basis of $30.12 per capita, or a total of $1,084.32."

In his decision on the aforesaid appeal, Comptroller of Treasury Appeal No. 29414, dated June 27, 1919, the Comptroller of the Treasury held in part as follows:

"This case is similar to one which was considered by this office in decision of May 10, 1918 (24 Comp. Dec. 663), in which it was held that—

"'under an agreement between the Government and railway companies for passenger transportation which limited combinations of party rates to certain gateways from which party rates were available at the time the agreement was entered into, the most im-
8 portant of which were canceled by the railway companies prior to the date the said agreement was to become effective, the combination of rates on other commercial centers or gateways may properly be used as a reasonable construction of the agreement.'

"The auditor having made settlement in accordance with the principles set forth in this decision by combination of fares over commercial gateways, his action is correct and is affirmed."

6. Your petitioner states that the aforesaid decision of the Comptroller of the Treasury is erroneous and unjust, and that the other decisions of the Auditor for the War Department in his settlement certificates heretofore enumerated in paragraph two of this petition are also erroneous and unjust, as all of said decisions are based upon said Appeal Decision No. 29414 of the Comptroller of the Treasury in determining the rate to be applied in said Auditor for War Department's settlement certificates for the transportation of the soldiers in question.

7. The total amount of $23,309.70, deducted and disallowed by the Auditor for the War Department in his settlement certificates heretofore referred to by number in paragraph two of this petition, was presented by your petitioner in 25 supplemental bills numbered:

Account number	Amount
32288 A	$3,465.25
32289 A	5,021.50
32084 A	789.95
34076 A	128.57
32080 A	4,445.67
33657 A	25.00
33868 A	667.44
9 32282 A	78.12
34080 A	1,783.75
33074 A	40.80
32494 A	16.33
32293 A	223.32
33076 A	732.55
50068 A	951.29
34291 A	157.56
33665 A	152.60
50077 A	54.78
36189 A	60.80
50066 A	474.02
50067 A	331.76
36216 A	345.71
34295 A	393.12
50078 A	490.96
36223 A	25.35
34078 B	2,769.82

and aggregating $23,626.02 in an appeal to the Comptroller General of the United States under date of September 15, 1921, and requesting payment of the said amount on the ground that the Auditor for the War Department cannot reduce the rate of fares properly charged by carriers under interterritorial military agreements, as was done by the Auditor for the War Department in said settlement certificates, and your petitioner, in support of its contention, cited legal authority prohibiting said deduction and disallowances. On September 27, 1921, the Comptroller General of the United States, by his decision, refused to reconsider the said decisions of the Auditor for the War Department in said settlement certificates and to pay said amount of $23,626.02.

10 8. There is also due and owing petitioner the sum of $6,224.20, under the provisions of the urgent deficiency appropriation act of October 6, 1917, for transportation of United States troops in addition to the amount of $23,309.70, set forth in petitioner's 25 supplemental bills presented on appeal to Comptroller General, under date of September 15, 1921, referred to in paragraph five of the petition. While the amount of $6,224.20, due under the provisions of the urgent deficiency act of October 6, 1917, is not set up in the said 25 supplemental bills heretofore referred to and presented to the Comptroller General, yet same is due on certain transportation requests included in said 25 supplemental bills, and claim is herewith presented for the said amount of $6,224.20, the details of which are as follows:

Date	Auditor's certificate	Item	Transp. request	No. fares	Rate as billed	Amount as billed	Revised rate, a/c urgent def'cy act	Amount	Additional claim, a/c urgent def'cy act
July 5-18	32878	3	246713 246727	74	$33.47	$2,476.78	$38.64	$2,859.36	$382.58
Sept. 30-18	34460	8	213614	118	23.22	2,739.96	27.81	3,281.58	541.62
			214117	397	27.92	11,084.24	32.51	12,906.47	1,822.23
Jan. 4-19	36296	13	875815 875852 875889	737	30.04	22,139.48	30.18	22,242.66	103.18
Feb. 4-19	37557	14	372796	52	23.22	1,207.44	27.81	1,446.12	238.68
March 20-19	38532	21	354992	182	25.58	4,655.56	30.04	5,467.28	811.72
Aug. 2-19	43235	24	344600	76	30.29	2,302.04	34.74	2,640.24	338.20
			344543	71	30.38	2,156.98	34.84	2,473.64	316.66
			344541	142	32.60	4,629.20	36.75	5,218.50	589.30
			344347	259	29.62	7,671.58	33.79	8,751.61	1,080.03
						61,063.26		67,287.46	6,224.20

The total amount of petitioner's claim is $29,553.90.

12 9. That no action upon your petitioner's foregoing claim of $29,533.90 has been had before Congress; that there is due and owing your petitioner the sum of $23,309.70, disallowed and deducted by the Auditor for the War Department, and your petitioner protested said deductions and disallowances to the Comptroller General of the United States under date of September 15, 1921, but to no avail. The Comptroller General of the United States in his decision of September 27, 1921, refused to authorize

the payment of the said amount of $23,309.70 by the Auditor for the War Department, and the said auditor and the said Comptroller General of the United States adhere to their decisions in spite of the insistence of your petitioner, and there is also due on its said 25 supplemental bills under the urgent deficiency act of October 6, 1917, the sum of $6,224.20; that no transfer or assignment of said claim or any part thereof or interest therein has been made; that said claim is now owned by your claimant, and no other person or corporation is the owner thereof or is interested therein, and that your petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs; that your claimant has at all times borne true allegiance to the United States, and has not in any way voluntarily abetted or given encouragement to rebellion against said Government.

PRAYERS

Wherefore your claimant prays:

1. That the court render a judgment against the United
13 States in favor of your claimant for the payment by the United States to your claimant of the said sum of twenty-nine thousand five hundred and thirty-three dollars and ninety cents ($29,533.90).

2. That your claimant may have such other and further relief as the nature of the case may require and to the court may seem meet and proper.

BALTIMORE & OHIO RAILROAD COMPANY,
By GEO. M. SHRIVER, *Senior Vice President.*

Attest:
C. W. WOOLFORD,
Secretary.

JOHN F. MCCARRON,
Attorney of record.
GEORGE E. HAMILTON,
Of counsel.

Sworn to by Geo. M. Shriver et al. Jurats omitted in printing.

14–15 V. *General traverse*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

VI. *Submission of case*

On February 2, 1925, this case was resubmitted on merits, on stipulation of parties, without argument by Messrs. John F. McCarron, for plaintiff, and by Perry W. Howard and Louis R. Mehlinger, for the defendant.

16 VII. *Findings of fact, conclusion of law and memorandum by the court. Entered February 16, 1925.*

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT

I

The plaintiff is a corporation duly incorporated under the laws of the State of Maryland. At the times of the different transactions hereinafter set out in these findings of fact, except during the period of Federal control, the plaintiff operated, and still operates, its system of railroads in various States of the United States, doing business as a common carrier of passengers and freight for hire and reward, under tariffs issued by it and its connecting lines, duly published and filed with the Interstate Commerce Commission according to law.

II

Before the services hereinafter described were rendered the railroad carriers of the United States generally, including the plaintiff, entered into agreements with the United States regulating fares and allowances for the transportation of United States troops and property, said agreements being variously entitled "Interterritorial military agreements," "Interterritorial military arrangements," etc. Said agreements were executed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Quartermaster General of the Army, the Chief of Bureau of Navigation of the Navy, and the Quartermaster of the United States Marine Corps. The said military arrangements, effective July 1, 1916, on page 6, contained the following stipulation:

"1. Party fares may be used as factors in constructing through net fares to and from central trunk line, southeastern, and New England territories, in the understanding that the basing points shall be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only. Neither two or more party fares nor a party fare and
17 an individual fare east or west of the gateways named may be combined in establishing a basing fare to or from the basing point. Party fares issued to and from basing points named must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published they shall be used in all cases in establishing

through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

The said interterritorial military arrangement, dated December 28, 1916, and effective January 1, 1917, on page 4, contained the following stipulation:

"v. Party fares.—Method of constructing net fares by use of party fares.—For military traffic moving from territory east of Chicago, St. Louis, Memphis, Vicksburg, and New Orleans to territory west thereof, or vice versa, authorized party fares to and from the gateways named may be used in the construction of through net fares, in the understanding that the basing points will be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only.

"Neither two or more party fares, nor a party fare and an individual fare east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Any party fare used to or from the basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published they shall be used in all cases in establishing through net fares; all fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

III

Under date of April 7, 1917, E. L. Bevington, chairman of the railroad military committee, wrote to Quartermaster General of the Army as follows:

"Confirming my telegram of this date, as follows:

"'Yours fifth. Interested carriers have concurred proposition permit Government combine party fares over Shreveport, Louisiana, in establishing net fares between points in southeastern territory east of the Mississippi and south of the Ohio and Potomac Rivers and points in Texas to and from which party fares are authorized to and from Shreveport. This in accordance with proposition advanced you January thirteenth. Concession is made in understanding all limitations and restrictions applicable to the combinations over Vicksburg, New Orleans, and other specified gateways, under western and interterritorial military arrangements shall apply, and further that this concession on part of carriers shall not estab-
18 lish a precedent. This arrangement to take effect July first, nineteen sixteen, within territory defined and to continue during the period that such combinations are available under tariffs duly filed with Interstate Commerce Commission. Writing to-day fully specifying conditions this concession. Assume under circum-

stances no ruling comptrollers this connection necessary. Acknowledge.'

"You are informed that this question was considered at conference of directly interested lines held in Houston, Texas, March 27 last, where the recommendation as quoted below was adopted, which recommendation has since been confirmed by all southwestern carriers interested:

"'Recommended, that with the concurrence of other southwestern carriers interested, it is understood that the Government may combine party fares over Shreveport, La., in establishing net fares between points in southeastern territory east of the Mississippi and south of the Ohio and Potomac Rivers and points in Texas to and from which party fares are authorized to and from Shreveport. This concession not to be used as a precedent. In all other respects the combinations of party fares to be restricted to the gateways specifically authorized in the military arrangement—that is, Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, on military traffic moving to and from eastern and southeastern territories and St. Louis and Kansas City on military traffic moving within territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans.

"'The combinations over Shreveport as herein authorized may be used beginning July 1, 1916, and may continue during the period that such combinations are available, under tariffs duly filed with the Interstate Commerce Commission.'

"As stated in foregoing, this concession under which the Government is permitted to combine party fares over Shreveport, La., on business originating in territory east of the Mississippi and south of the Ohio and Potomac Rivers, and destined to Texas points, and vice versa, is not to establish a precedent. In other words, conditions of the western and interterritorial military arrangements as to the combinations of party fares are to be confined to Chicago, St. Louis, Memphis, Vicksburg, and New Orleans on traffic from eastern and southeastern territory to territory west of those gateways and vice versa, and within western territory the only combinations of party fares permissible are those over St. Louis and Kansas City, except as stated in the above recommendation with reference to Shreveport. Triple combinations either of party fares with party fares or party fares with individual fares not permissible.

"Combinations may be made over Shreveport beginning July 1, 1916, from the territory east of the Mississippi and south of the Ohio and Potomac Rivers to points in Texas and vice versa to and from which party fares are authorized to and from Shreveport and to continue during the period that such combinations are available under tariffs duly filed with the Interstate Commerce Commission.

"It is assumed that this will obviate the necessity of any decision of the Comptroller of the Treasury with reference to combinations

over Vicksburg and Shreveport or over other points not now specifically named in the military arrangements and herein.

"Please acknowledge receipt and advise if satisfactory."

19

V

The railroads of this country are divided into seven passenger territorial groups, in each of which there is a passenger association. These associations are: New England, trunk line, central, southeastern, southwestern, western, and transcontinental, each of which functions on all commercial and military matters within its particular territory. The chairmen of the said various passenger associations constitute the committee which handles or functions on all interterritorial business; that is, business moving from one territorial group into another, of which Mr. E. L. Bevington was chairman. The movements in question were from Washington, D. C., and Newport, Ky., located in southeastern territory to San Antonio, Tex., in southwestern territory, and were governed by the interterritorial military arrangements of 1916 and 1917.

VI

At the time the transactions referred to in these findings of fact occurred, there was in force an agreement, to which the plaintiff was a party, commonly known as the "Passenger land grant equalization agreement," between the carriers of the United States generally and the Government, which reads as follows:

"For transportation of persons for whom the United States Government is lawfully entitled to reduced fares over land grant roads, the carriers whose names are signed hereto, when movement is to be made under United States requests for transportation of the issue of the War Department, Navy Department, or Marine Corps, hereby agree, subject to the exceptions filed by each individual line forming part of a through route and subject also to the general exceptions (a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, and r) herein specifically stated to accept lowest net fare and lowest net excess-baggage rate lawfully available as derived, through deductions account land grant distance, via a usually traveled route for military traffic, from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement."

VII

The Southeastern Joint Party Tariff K2, I. C. C. F-2660, in force at the time the service was performed, authorized the use of a party fare between Washington, D. C., and Vicksburg, Miss., and between Newport, Ky., and Vicksburg, Miss. It contained the following stipulation, on page 31:

"33. Party fares to destinations or from points of origin not shown in this tariff will be made by adding the party fares shown in this tariff to the party fares shown in other tariffs as lawfully on file with the Interstate Commerce Commission, provided that if the party fare so made exceeds the party fare to or from a point beyond on the same through line as shown in this tariff the latter fare will apply. Party fares so made will apply via all routes authorized under this tariff to or from contiguous points of origin or of destination."

20 The Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. No. 2142, authorized the use of a party fare between Vicksburg, Miss., and Shreveport, La. The Texas Louisiana Party Tariff 2, I. C. C. 465, authorized the use of a party fare between San Antonio and Eagle Pass, Tex., and Shreveport, La.

The gross party fare between Washington, D. C., and Vicksburg, Miss., Southeastern Party Tariff K2, I. C. C. 2660, was $21.35. The gross party fare between Newport, Ky., and Vicksburg, Miss., same tariff, was $14.15. The gross party fares between Shreveport, La., and Vicksburg, Miss., V. S. & P. Circular 7077, I. C. C. 2142, was $3.88. The gross party fare between Shreveport, La., and San Antonio, Tex., Texas-Louisiana Party Tariff No. 2, I. C. C. 465, was $8.50, and the gross party fare between Shreveport and Eagle Pass, Tex., same tariff, was $11.95.

Adding the gross party fare from Washington to Vicksburg, $21.35, to the gross party fare from Vicksburg to Shreveport, $3.88, gives a gross party fare from Washington to Shreveport of $25.23, and with a combination on Shreveport of $8.50 gross fare from Shreveport to San Antonio, gives a gross party fare from Washington to San Antonio of $33.73.

Adding the gross party fare from Newport to Vicksburg, $14.15, to the gross party fare from Vicksburg to Shreveport, $3.88, with a combination on Shreveport of $8.50 gross party fare from Shreveport to San Antonio, gives a gross party fare of $26.53 from Newport to San Antonio, and with a combination on Shreveport of $11.95 gross party fare from Shreveport to Eagle Pass gives a gross party fare of $29.98 from Newport to Eagle Pass.

The fare from Washington to San Antonio on June 20, 1916, with land-grant deductions, was $28.25, and on November 3, 1916, the fare, with land-grant and 5 per cent military deduction, was $27.35. These are the dates applicable to the two movements from Washington to San Antonio, and the difference is due to 5 per cent military allowance on the movement in November.

The net fare from Newport to San Antonio was $21.15, and from Newport to Eagle Pass was $24.60 at the time of the said movements.

VIII

At different times during the years 1916 and 1917, beginning in June, 1916, and ending in December, 1917, the plaintiff and its connecting carriers transported over its respective lines, upon Government transportation requests, numerous movements of United States troops. For this service the plaintiff, as initial carrier, presented its bills, based on net per capita fares obtained by combinations only on the western gateways specified in the interterritorial arrangements of 1916 and 1917, to the proper disbursing officer. The bills so rendered, Nos. 32288, 32289, 32084, 34076, 32080, 33657, 33868, 32282, 34080, 33074, 32494, 32293, 33076, 50068, 34291, 33665, 50077, 36189, 50066, 50067, 36216, 34295, 50078, 36223, and 34078, except bills Nos. 32293, 33076, and 34295 were paid as presented in the sum of $289,774.89, of which amount $172,210.31 was, at different times, from November 17, 1916, to December 20, 1917, inclusive, paid to plaintiff, and the balance $117,564.58, was at different times, from Feb-
21 ruary 11, 1918, to April 16, 1918, inclusive, paid to the Director General of Railroads and credited by him to plaintiff.

General Order No. 17 is attached to these findings as Appendix A and made part of this finding by reference.

IX

The bill No. 32293 T/R 20383 was rendered for $3,721.39, and upon refusal of the disbursing officer to pay it was restated at $3,705.94, a difference of $15.45, in which amount it was paid and received by plaintiff without protest on June 12, 1917. Bill No. 33076 T/R 61787 was rendered for $7,782.97, based on a net per capita fare of $26.03, and upon refusal of the disbursing officer to pay it was restated at $7,343.44 by plaintiff, based on a net per capita fare of $24.56, in which amount it was paid on March 25, 1918, to the Director General of Railroads and received without protest. The plaintiff presented a supplemental bill No. 33076–A to the Auditor for the War Department for the difference between the net fares of $25.87, $7,735.13, and the net fares of $24.56, $7,343.44, a difference of $391.69, which was disallowed by the auditor on July 24, 1918, without protest by plaintiff. Bill No. 34295 T/R 354992, was rendered for $4,655.56, based on a net per capita fare of $25.58, and upon refusal by the disbursing officer to pay it plaintiff restated it at $4,469.92 based on a net per capita fare of $24.56, in which amount it was paid to the Director General of Railroads on April 1, 1918, and received by him without protest. The plaintiff filed a supplemental bill for the amount dropped in the restatement, $185.64, with the auditor, who disallowed same on October 9, 1918, without protest from plaintiff.

Bill No. 34078 (T/Rs 34460, 344543, 344347, and 344541) was rendered by plaintiff for $14,919.98 and was paid by the disbursing officer to the Director General of Railroads in full as presented on

April 16, 1918. On March 25, 1919, plaintiff presented a supplemental bill, No. 34078–A, to the auditor for $16,759.80, a difference of $1,839.82, which was disallowed by him without protest from plaintiff on April 23, 1919.

X

The Auditor for the War Department in auditing the accounts of said disbursing officer disallowed as overpayments by him of plaintiff's said bills amounts aggregating $20,978.45, and these amounts were deducted at different times from March 12, 1920, to September 17, 1920, inclusive, from bills of the Railroad Administration by the auditor. Of the said deductions amounts aggregating $16,588.13 were obtained by routing so as to make combinations on points not authorized by the interterriotrial military arrangements of 1916 and 1917. Deductions aggregating $1,780.89 were obtained by adding the gross party fare from Washington, D. C., to Vicksburg, Miss., $21.35, authorized in the Southeastern Joint Party Tariff K2, I. C. C. F–2660, to the gross party fare from Vicksburg, Miss., to Shreveport, La., of $3.88, authorized by the Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. 2142, making a through gross party fare of $25.23 from Washington to Shreve-
22 port, and adding the gross party fare of $8.50 authorized by the Texas-Louisiana Party Tariff No. 2, I. C. C. 465, from Shreveport, La., to San Antonio, Tex., making a through gross party fare of $33.73 from Washington to San Antonio, and a net fare of $28.25 in June, 1916, and a net fare of $27.35 in November, 1916. By adding the gross party fare, $14.15, authorized by the Southeastern Joint Party Tariff K2, I. C. C. F–2660, from Newport, Ky., to Vicksburg, Miss., to the gross party fare from Vicksburg, Miss., to Shreveport, La., of $3.88, authorized by the Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. 2142, making a gross party through fare from Newport to Shreveport of $18.03, and by adding the gross party fare of $8.50 from Shreveport to San Antonio, Tex., authorized by the Texas-Louisiana Party Tariff No. 2, I. C. C. 465, making a gross party fare of $26.35 from Newport to San Antonio, and a net party fare of $21.15, and adding the gross through party fare from Newport to Shreveport of $18.03 to the gross party fare of $11.95 from Shreveport to Eagle Pass, Tex., authorized by the same tariff, making a gross through party tariff of $29.98 from Newport to Eagle Pass and a net party fare of $24.60.

XI

The amount of the deductions by the auditor obtained by routing by way of Chattanooga, Tenn., Meridian, Miss., and Shreveport, La., an authorized and a usually traveled route for military traffic, on the basis of land-grant deductions and 5 per cent military allowance from first-class individual fares, was $2,609.43. The plaintiff

based its net fares from Columbus and Cincinnati, Ohio, by a route through St. Louis, Mo., and Texarkana, Ark., to points in Texas; also an authorized and usually traveled route for military traffic, but with less land-grant mileage.

The average mileage of the routes by which the troops were actually moved was greater than the average mileage of the routes by which the fares were computed by either the accounting officers or the plaintiff.

XII

The difference between the amount paid to plaintiff by the Government on the basis of 100 per cent land-grant deduction for the transportation of the United States troops described in Finding VIII and the amount to which it was entitled on the basis of a 50 per cent land-grant deduction under the equalization agreement set out in Finding VI and the act of October 6, 1917 (40 Stat. 361), is $2,208.55, which has not been paid in whole or in part to plaintiff.

XIII

Of the amount deducted by the auditor from Railroad Administration bills at different times from March 12, 1920, to September 17, 1920, $20,978.45, the sum of $13.58 was refunded by plaintiff to the War Department on July 7, 1919, and the sum of $20,939.52 was charged back to plaintiff by the Railroad Administration
23 in December, 1921, through the account "Federal assets collected," and $25.35 was charged back to plaintiff by the Railroad Administration through the account "Corporate transactions."

XIV

In December, 1921, the plaintiff paid the amount charged back to plaintiff through the account "Federal assets collected" ($20,939.52) into the "trustee fund" to credit of the Railroad Administration, and charged the same on its books in a suspense account against the War Department.

The trustee account was created by General Order No. 68, issued February 24, 1920, to take effect at the termination of Federal control, at 12 o'clock midnight, February 29, 1920. By this order the different railroads that had been under Federal control were made trustees of the United States Railroad Administration to collect all of its unpaid bills and to pay all of its outstanding liabilities and generally to wind up all of its unfinished transportation business. All Federal cash pertaining to the transportation business was turned over to the railroads to be carried in this account. Any moneys erroneously paid into the trustee account by deposit in the banks where such accounts were kept could be withdrawn by a railroad company making such deposits with the consent of the Director General of Railroads.

General Order No. 68 is attached to these findings as Appendix B and is made part of this finding by reference thereto.

XV

The sum of $25.35 deducted from a Railroad Administration bill on August 14, 1918, on account of alleged overpayment by the disbursing officer of corporate bill before Federal control and charged back to the plaintiff in December, 1921, through the account "Corporate transactions" by the Railroad Administration was paid to said Railroad Administration by plaintiff in the final settlement of July 27, 1922, through said account "Corporate transactions."

The act of February 28, 1920 (41 Stat. 456, 457), provided for the termination of Federal control.

On February 24, 1920, General Order No. 66, effective February 29, 1920, was issued by the United States Railroad Administration for the purpose of outlining the method to be followed in the separation of the accounts of the Railroad Administration and the different railroads under its control when the railroads should be returned to their owners, which provided among other thing that:

"SEC. 5. (a) * * * If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lay-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds, chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account
24 as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account '(Name of corporation)—Corporate transactions,' and on the corporate books should be charged to an appropriate suspense account and credited to the account 'U. S. Government—Corporate transactions.'"

General Order No. 66 is attached to these findings as Appendix C and is made part hereof by reference.

XVI

The material parts of the final settlement agreement of July 27, 1922, between the director general and the plaintiff read as follows:

"The said director general hereby acknowledges payment of the sum of one dollar ($1.00) by said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands of every kind and character, which the said director general, or anyone representing or claiming to represent the director general, the United States, or the President, now

has or hereafter may have or claim against the said companies, or any of them growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 24th day of June, 1919; and the said companies, both jointly and severally, hereby acknowledge the return to and receipt by them of all the property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and settled all obligations on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control.

"The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto, growing out of the Federal control of railroads, save and except that the following matters are not included in this adjustment and are not affected thereby:

"'EXCEPTIONS

* * * * * * * *

"'2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies, or any of them, pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.'"

XVII

On August 25, 1920, a complete settlement was made between the War Department and the Director General of Railroads of all unsettled accounts for transportation furnished by the Railroad Administration to the War Department between January 1, 1918, and March 1, 1920, the period of Federal control of railroads, and the amount paid by the War Department to the Railroad Administration in such settlement was $38,169,294.39.

25 On August 26, 1920, the comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, accounting circular 152, which reads:

"*To each carrier, the properties of which were under Federal control at the termination thereof at midnight, February 29, 1920:*

"A settlement has been made between the War Department and the director general for all unpaid charges for passenger and freight transportation service, including Pullman fares and demurrage charges, rendered by the director general.

"Accounting officers are directed to close into an account styled 'War Department transportation charges' all unpaid accounts against the War Department carried in the Federal books covering such transportation service and to discontinue rendering Federal bills against the War Department for services of this nature.

"The account 'War Department transportation charges' shall be closed into the administration ledger control account and reported as a special item on Form AC–512–A in the same manner as prescribed in Accounting Circular 82 for reporting other items transferred to the administration ledger control account. Record of the balance so transferred shall be kept in the Federal accounts in such detail that it may be readily audited by representatives of the Railroad Administration.

"Special attention is directed to the fact that the settlement above referred to involves the War Department only, that it does not include amounts due for the construction of tracks, service at cantonments, etc., and does not include bills rendered in the Federal accounts for transportation service performed prior to Federal control.

"Unpaid bills carried in the Federal accounts against the War Department, for transportation service performed prior to Federal control, shall not be closed into the account 'War Department transportation charges,' but instead shall be charged to the corporation through the account '(Name of corporation)—Corporate transactions.' Such charges against the corporation, when reported on settlement statement Form AC–510, shall be allocated to the quarter in which the corporation was originally credited with the amount, or bill was stated in the accounts."

XVIII

In pursuance of the authority contained in section 1 of the act of March 21, 1918 (40 Stat. 451–453), known as the "Federal railroad control act," the Director General of Railroads, on June 24, 1919, entered into an agreement with the Baltimore & Ohio Railroad Co. and its affiliated companies.

A copy of the said agreement between the Director General of Railroads and the Baltimore & Ohio Railroad Company, dated June 24, 1919, is made part of this finding by reference thereto.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum
26 of $16,588.13 (Finding X) and the sum of $2,208.55 (Finding XII), or a total of $18,796.68.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of eighteen thousand, seven hundred and ninety-six dollars and sixty-eight cents ($18,796.68).

MEMORANDUM

1. The several items claimed, as set forth in Finding IX, are not recoverable where the bills were rendered to disbursing officers and payments by him were received. (See Oregon-Washington R. & N.

Co., 255 U. S. 339; 54 C. Cls. 131; Baltimore & Ohio Railroad Company case, 52 C. Cls. 468.)

2. The deductions made by the auditor on account of combinations of fares, namely, $1,780.89 (Finding X), were proper. The military arrangements of 1916 and 1917 provided that any party fare used to or from basing points should be authorized as a through party fare. The Southeastern Joint Party Tariff K2 (Finding VII) provides methods for combination fares. The combinations were properly made on Vicksburg and Shreveport. (See Norfolk Southern Railroad Company case, 59 C. Cls. 517.)

3. The auditor's deductions, aggregating $16,588.13 (Finding X), obtained by routing or making combinations on points not authorized by the interterritorial military arrangements were erroneous. (See Atchison, Topeka & Santa Fe Railroad Company case, 256 U. S. 205.)

4. The auditor's routing of the movements and consequent land-grant deductions (Finding XI), were authorized by the equalization agreement (Finding VI).

5. The plaintiff is entitled to recover the item of $2,208.55 (Finding XII), because of the act of October 6, 1917 (40 Stat. 361).

6. The questions of payment of corporate bills to the director general, the deductions by the auditor, and the subsequent settlement between the plaintiff and the Railroad Administration are settled by cases of Reading Company, No. 34747, Southern Railway Company case, No. B–118, and New York, New Haven & Hartford Railroad Company case, No. B–44, decided January 5, 1925.

27 APPENDIX A

United States Railroad Administration, Director General of Railroads

GENERAL ORDER NO. 17

WASHINGTON, D. C., *April 3, 1918.*

To chief executive officers of carriers subject to Federal control:

It is hereby ordered that the following rules and regulations shall be observed and shall govern the recording of and accounting for all transactions which arise during Federal control:

(1) For accounting purposes Federal control began as of January 1, 1918. Immediate steps shall be taken by each carrier subject thereto, to open new and separate books of accounts, such as cash books, general and subsidiary ledgers and journals, and all supporting and subsidiary books and records incident thereto, upon which shall be recorded transactions which arise under and are incident to Federal control on and after January 1, 1918. Such books shall be designated and are hereinafter referred to as "Federal books."

(2) The totals of the accounts "Cash," "Demand loans and deposits," and "Time drafts and deposits" appearing on the corpora-

tion's books as of December 31, 1917, shall be transferred to the Federal books, debited to accounts of the same titles, and credited to a deferred liability account styled "(Name of corporation)—Cash—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Cash—December 31, 1917." All cash transactions subsequent to December 31, 1917, relating to operations prior or subsequent thereto, shall be recorded in the Federal cash book opened as of January 1, 1918.

(3) The total of account "Net balance receivable from agents and conductors" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Agents' and conductors' balances—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Agents' and conductors' balances—December 31, 1917."

(4) The total of account "Materials and supplies" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Materials and supplies—December 31, 1917." On the corporate books the amount of such balance should be transferred to a deferred asset account styled "U. S. Government—Material and supplies—December 31, 1917."

(5) In addition to the assets above specified there shall be likewise transferred to the Federal books and similarly recorded thereon such other working assets of the corporation as may be mutually agreed upon.

(6) There shall be currently entered, upon such Federal books, in the manner and under the rules and regulations prescribed by the Interstate Commerce Commission, or which may hereafter be prescribed, all transactions involving revenues, expenses, taxes and rentals, and other items corresponding to those which constitute the basis upon which the standard return to the carrier shall be determined. Such entries shall include corresponding assets and liabilities and the cash settlement thereof; also all transactions involving materials and supplies subsequent to December 31, 1917.

(7) Transactions of the corporation, including those arising out of cash receipts or disbursements, which do not affect or which do not enter into and form a part of those used in determining the basis of standard return, such as interest and dividends received or paid, miscellaneous rents, and other similar corporate transactions, including additions and betterments, shall not be recorded on or passed through such Federal books unless such transactions be negotiated and conducted for account of the corporation by or under the direction of the director general. Where such income transactions are negotiated and conducted by or under the direction of the director general the transactions shall be recorded on the Fed-

eral books but credited or charged to an account to be opened, styled "(Name of corporation)—Corporate income transactions." Concurrently, corresponding entries should be made on the corporate books charging or crediting the accounts prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, the offset being in an account styled "U. S. Government—Corporate income transactions." Where additions and betterments are made by or under the direction of the director general, the expenditures shall be charged on the Federal books to a deferred asset account "(Name of corporation)—Additions and betterments." Concurrently, entries should be made on the corporate books, charging the appropriate accounts and crediting a deferred liability account "U. S. Government—Additions and betterments."

(8) Current or operating assets, other than those prescribed in paragraphs (2), (3), (4), and (5) hereof, such as, balances due from individuals and companies, and liabilities, such as, vouchers, payrolls, etc., which were due to or by the corporation as of December 31, 1917, shall not be transferred in detail to the Federal books; but as and when such assets are collected or the liabilities are paid, they shall be credited or debited, as the case may be, on the Federal books to a deferred liability account styled "(Name of corporation—Assets, December 31, 1917, collected," or to a deferred asset account "(Name of corporation)—Liabilities, December 31, 1917, paid." There should be concurrently made on the corporate books, corresponding entries debiting and crediting the U. S. Government with assets collected and liabilities paid.

(9) Transactions relating to operations, as defined in paragraph (6) hereof, if not previously accrued, shall be included in and shall form a part of the operating results of each carrier regardless of the date thereof. Items clearly applicable to the period prior to January 1, 1918, commonly called "lap-overs," shall be ascertained currently, set up on the Federal books, and included in the appropriate accounts as heretofore. At the end of each month, the total of "lap-over" credit items shall be charged to an unadjusted debit account styled "Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918." The total of "lap-over" debit items shall be credited to an unadjusted credit account styled "Expense prior to January 1, 1918," and charged to a deferred asset account styled "(Name of corporation)—Expense prior to January 1, 1918." Operating revenues which have been accrued currently in accordance with the established practice of the carrier, shall be considered as current revenues and not as "lap-over" items.

(10) The acounts between the U. S. Government and the corporation, for which provision is made herein, shall be adjusted in such manner as may be hereafter agreed upon.

(11) Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under its requirements shall be addressed to the Director of Public Service and Accounting.

W. G. McAdoo,
Director General of Railroads.

APPENDIX "B"

UNITED STATES RAILROAD ADMINISTRATION,
Washington, February 24, 1920.

GENERAL ORDER NO. 68

The return of properties operated by the United States Railroad Administration to their owners at midnight February 29, 1920, necessitates the issuance of instructions in reference to the disposition of Federal cash and securities on hand February 29, 1920, for the proper handling thereof, and for cash collections of assets and payment of liabilities arising out of Federal operations. The word "corporation" hereinafter used refers to the corporation, receiver, or operator of the property to whom the property is returned at midnight February 29, 1920.

The corporation whose property is under Federal operation at midnight February 29, 1920, is hereby authorized after midnight February 29, 1920, to receive for the account of the Director General of Railroads cash realized in liquidation of the assets outstanding on the Federal books as of midnight February 29, 1920, belonging to the Director General of Railroads or arising subsequently from the operation of the property of the corporation under Federal control prior to midnight of February 29, 1920, and to pay out of Federal funds Federal liabilities outstanding at midnight February 29, 1920, or expenses arising out of Federal operation of its property not stated as of February 29, 1920, subject, however, to the following limitations and instructions:

Federal treasurers' and paymasters' cash on hand February 29, 1920

Cash on hand and in banks charged to the account of Federal treasurers and paymasters and their assistants at midnight February 29, 1920, shall be transferred to the corporation in trust for the Director General of Railroads.

Federal treasurers in conjunction with Federal auditors shall arrange for the transfer of said cash as of midnight February 29, 1920, from the respective Federal officers having such funds to the corporation and shall take its receipt therefor in quadruplicate, one copy to be left with the corporation treasurer, one to be filed with the Federal cash records, one to be mailed to the Director of the Division of Finance, and the other to be filed with the audit of the cash accounts in this paragraph referred to, which should be in

accordance with the form of reports referred to in P. S. & A. Circular No. 54. If in the transfer of funds to the Director General of Railroads at the beginning of Federal control postage and revenue stamps were included as cash items, if on hand at the end of Federal control they should be similarly treated in the transfer to the corporation. Corporate officers shall be instructed to continue the funds on deposit in the banks in which they now are and cash received, not on deposit, shall be placed on deposit in the same banks, and all deposits shall be carried in the name of the corporation, in trust, as trustee, for the Director General of Railroads. Federal treasurers in conjunction with Federal auditors shall also arrange to transfer to the corporate treasurers all securities, notes, and other evidences of indebtedness in their possession and belonging to the Director General of Railroads, taking receipts therefor in quadruplicate and distributing same according to provision in the preceding paragraph. Instructions for subsequent disposition of such securities, notes, and other evidences of indebtednesses will be given by the Director of the Division of Finance.

Cash in hands of agents, conductors, pursers, and stewards

Cash in hands of agents, conductors, pursers, and stewards at midnight February 29, 1920, and except as otherwise provided in General Orders Nos. 66 and 67, section 2 (*f*), cash thereafter collected applying on accounts outstanding as of their balance sheets, or accounts current for February, 1920, when remitted to and received by the corporation or by banks credited to the corporation, shall be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Cash in working funds

The cash remaining as of midnight February 29, 1920, in working funds and cash in transit February 29, 1920, to such funds in the hands of officers, agents, employees, and others, if not used during the month of March, 1920, to pay Federal expenses and liabilities, shall be remitted to the treasurer of the corporation and be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Cash from other assets

Cash collected in liquidation of Federal assets and cash collected by the corporation from employees by pay roll deductions for Liberty Loan bond subscriptions, overpayment of wages, etc., due "Federal operations" shall be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Provision for paying out Federal funds by corporations

Federal funds in the custody of the corporation in trust as trustee for the Director General of Railroads shall not be subject to check of nor paid out by the corporation except as trustee for the Director General of Railroads in payment of Federal liabilities and expenses: Provided, however, That except upon specific authority of the Director of the Division of Finance payment of Federal liabilities and expenses herein below mentioned shall not be made:

1. Any amounts due or claimed to be due from the Director General of Railroads to said corporation or to any corporation, receiver, or any other person owning, controlling, or operating prior to Federal control the properties relinquished from Federal control at midnight, February 29, 1920.

2. Payment for invoices for materials and supplies ordered prior but received by the carrier subsequent to February 29, 1920. Provided, however, payment may be made to the corporation in settlement of the monthly amount paid out of corporation funds in settlement of lap-over expenses or refunds of overcharges particularly referred to in section 7 of General Orders Nos. 66 and 67.

Subject to such further directions as may hereafter be issued, no payment for the Director General of Railroads herein authorized shall be made unless on voucher or draft properly approved by the corporate officer or officers having authority to approve like payments for the corporation out of its own funds, and the corporation shall exercise the same care and adopt the same safeguards in connection with payments from Federal funds as it employs in respect to its own funds. Nor shall payment be made in respect to any item concerning which, during or subsequent to Federal operation, objection has been or shall have been made by the Director General, a director, or the general counsel of the United States Railroad Administration, the comptroller, a regional director, a Federal manager, a Federal treasurer, a Federal auditor, or the subordinate officers of the last three officers named, where the objection of such subordinate officer has not been overruled and removed, unless specially authorized subsequent to February 29, 1920, by the appropriate division of the Railroad Administration or by the comptroller.

Payments to persons or corporations, other than carriers, federally operated prior to March 1, 1920, shall comprehend the offset of any indebtedness that may be due from such companies; otherwise such payments shall not be made unless otherwise ordered by the Director Division of Finance.

No payment shall be made for material and supplies purchased and delivered prior to midnight, February 29, 1920, based on prices in excess of contract stipulations entered into prior to February 29, 1920, or prices at which the material was ordered, unless authorized by the Director of the Division of Purchases.

Federal financial requirements

Beginning March 1, 1920, chief executives of corporations should advise the Director of the Division of Finance at the beginning of each week of the Federal cash situation for the forthcoming two weeks. Such advice shall indicate the cash on hand, the probable amount of receipts from liquidation of Federal assets, and the approximate payments to be made during the first and second weeks separately.

The Director of the Division of Finance will endeavor to keep the corporation in funds for Federal purposes, but in the event of pay rolls or other significant indebtedness of the administration coming due and insufficient Federal funds are on hand, chief executives should telegraph the Director of the Division of Finance therefor in time to allow action thereon to be taken.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight, February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the Director Division of Finance.

WALKER D. HINES,
Director General of Railroads.

UNITED STATES RAILROAD ADMINISTRATION,
Washington, February 28, 1922.

GENERAL ORDER NO. 68–A

After February 28, 1922, no payments account liabilities arising out of Federal control shall be made out of the trustee account created by General Order No. 68 except, first, claims in which settlement has been definitely agreed upon and approved by the Railroad Administration prior to March 1, 1922; second, claims upon which suit has been instituted prior to March 1, 1922; third, straight overcharge claims.

Claims based upon pay checks, vouchers, taxes, and invoices for materials and supplies must be forwarded to L. J. Tracy, Comptroller, United States Railroad Administration, Washington, for final disposition. All other claims presented subsequent to February 28, 1922, must be declined.

JAMES C. DAVIS,
Director General.

Confirmation of telegram of February 28, 1922.

APPENDIX "C"

UNITED STATES RAILROAD ADMINISTRATION,
Washington, February 24, 1920.

GENERAL ORDER NO. 66

To provide accounting procedure incident to the termination of Federal control and to reestablish as of the end of Federal control the instructions relative to allocation of revenues and expenses as between the United States Railroad Administration and the corporations, applied as of the beginning of Federal control, it is ordered that the following regulations be observed in accounting for transactions relating to the Federal control of transportation systems:

1. Books and accounts

The separate books of account, such as the Federal Treasurer's cash book, the general and the necessary subsidiary ledgers and journals, and all supporting books and records relating thereto, upon which are recorded transactions incident to Federal control and which have been designated as "Federal books," shall be continued in use after February 29, 1920, for the purpose of recording therein Federal control transactions after the period of Federal operation ceases and until further ordered. Transactions arising out of operations subsequent to February 29, 1920, shall not be entered on the Federal books, but should be entered on the corporate books; likewise all transactions not previously accounted for either on the Federal or corporate books relating to the period prior to Federal control should be entered on the corporate books and shall be omitted from the Federal books.

2. Cash

(a) The Federal Treasurer's cash book, in which is recorded the balance of cash on hand February 29, 1920, shall be continued in use after that date until further ordered, and all Federal control cash transactions arising after the end of Federal control shall be entered in such cash book in accordance with instructions here following.

(b) The total of the amount of cash, if any, transferred to the corporation from the cash in the hands of the Federal Treasurer in accordance with General Order No. 68 shall be charged on the Federal books to a deferred asset account styled "(Name of corporation)—Federal cash, February 29, 1920." The amount of such cash transferred should be entered in the corporate cash book, and on the corporate general books should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Federal cash, February 29, 1920."

(c) The balance in the account appearing on the Federal books representing cash in transit applicable to accounts for the period prior to March 1, 1920, shall be charged on such books to a current asset account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made, debiting the appropriate account or accounts and crediting a current liability account styled "U. S. Government—Federal cash in transit, February 29, 1920." When such cash is received by the corporation it shall be paid over daily into the Federal cash account and entered on the Federal books as a credit to the account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made debiting the account "U. S. Government—Federal cash in transit, February 29, 1920."

(d) When cash is realized from assets of the director general the amount thereof shall be credited through the Federal cashbook to the proper accounts. This refers to assets recorded as of February 29, 1920, and those subsequently recorded on the Federal books. This cash shall not be entered on the corporate books in any manner, except as provided in 2 (c), 2 (f) and section 7.

(e) All authorized payments of liabilities of the Director General made out of Federal cash shall be charged on the Federal cashbook to the proper accounts. Such payment should not be entered on the corporate books in any manner, except as provided in section 7.

(f) On and after March 1, 1920, all remittances (except those deposited in the Federal cash and accounted for as applicable to the agents' and conductors' accounts for February, 1920) received from agents and conductors shall, in the first instance, be entered in the corporate cashbook and credited to the appropriate accounts on the corporate general books. To the extent that items standing in the account "Agents' and conductors' balances" as of February 29, 1920, are included in such remittances, the amount shall be reported to the accounting department and the aggregate paid over daily into the Federal cash. Such payments should be charged on the corporate books to the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920." On the Federal books the payments shall be charged to "Cash" and credited to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." This method of daily settlements shall apply to agents' and conductors' unremitted cash on hand at midnight February 29, 1920, and to all collections made by agents and conductors during the month of March, 1920, applicable to balances of February 29, 1920. The balance in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," after such collections have been credited thereto shall be treated as an open account, includible on quarterly settlement Form AC–510.

3. Agents' and conductors' balances

(*a*) The total of the accounts representing amounts carried as due from agents and conductors appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited on the Federal books to an account styled "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount of such balances should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

(*b*) Any portion of the balance in the account representing agents' and conductors' balances at December 31, 1917, credited on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," which was subsequently transferred from the agents' and conductors' accounts to accounts receivable, or other asset or liability accounts, other than those prefixed with the name of the corporation, or is in the balances carried to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," and is uncollected as of February 29, 1920, shall also be transferred on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books the amount should be debited to the appropriate accounts and credited to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917."

(*c*) If amounts representing advances and prepaid charges on waybills outstanding December 31, 1917, were transferred to the Federal books, the balances in the advances and prepaid accounts shall be transferred to the corporate books, and on the Federal books included in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount should be carried to the proper account or accounts, and should be included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

If amounts of advances and prepaid charges on waybills dated prior to January 1, 1918, transferred from the corporate to the Federal books and included in the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," are outstanding as of February 29, 1920, the amounts thereof shall on the Federal books be transferred from the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books such amounts should be transferred from the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917." The amounts to be transferred to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917,"

provided in paragraphs (*b*) and (*c*) of this section, shall be reported on Form AC–510 as for the first quarter of 1918.

(*d*) In the event that amounts included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," set up on the corporate books as provided in paragraph 3 (*a*) hereof are later found to be chargeable to such accounts as "Material and supplies," "Additions and betterments," "Individuals and companies," or other accounts on or properly includible on the Federal books, entry should be made on the corporate books charging the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," crediting the amount thereof to agents' and conductors' accounts. On the Federal books an entry covering such items shall be made charging the appropriate account or accounts and crediting the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." Amounts relating to material and supplies shall be, on the Federal books, charged to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," instead of to "Material and supplies." An additional entry on the corporate books should be made in respect to the amounts chargeable to "Material and supplies" account, debiting "Material and supplies" account and crediting "U. S. Government—Federal material and supplies, February 29, 1920."

4. Material and supplies

(*a*) The total of the account "Material and supplies" appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited to a deferred asset account on the Federal books styled "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such balance should be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal material and supplies, February 29, 1920."

(*b*) All material and supplies received prior to March 1, 1920, shall be accounted for in the Federal books. All invoices for such material and supplies referred to in the previous sentence as are vouchered after the close of the accounts for the month of February, 1920, shall be covered by Federal form of vouchers and the cost of all such material and supplies shall be added to the account "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such vouchers should be charged to appropriate account for material and supplies and credited to the account "U. S. Government—Federal material and supplies, February 29, 1920."

(c) Amounts paid prior to March 1, 1920, for material and supplies not received at midnight February 29, 1920, shall not be included on the Federal books in the account representing stock of material and supplies or in the account "(name of corporation)—Federal material and supplies, February 29, 1920." Neither shall

material represented thereby be included in the inventory taken in accordance with the provisions of General Order No. 62. Such amounts shall instead be charged on the Federal books to an appropriate deferred asset account.

When the material and supplies therefor are received, or used by the corporation, the amounts shall, on the Federal books, be charged to the corporation through a deferred asset account styled "(Name of corporation)—Federal assets collected," and should, on the corporate books, be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal assets collected."

(d) Material and supplies ordered prior to March 1, 1920, received and paid for by the corporation subsequent to February 29, 1920, shall not be entered in the Federal accounts in any manner.

5. Other accounts transferred

(a) In addition to the asset accounts above specified, there shall be likewise transferred to the corporate books other asset accounts of the Federal administration, similar to those sundry asset accounts which were taken over on the Federal books in the separation of accounts at the beginning of Federal control or subsequent thereto. The items here referred to are such as: Insurance premiums paid in advance, taxes paid in advance. Additional items of miscellaneous assets (for example, material loaned or leased), or liabilities, should be similarly transferred as may be mutually agreed upon.

Subsequent to February 29, 1920, cash vouchers should not be made for reimbursement of working funds expended during February, 1920, and previous months, but if such expenditures are approved the amounts thereof shall, on the Federal books, be charged to the appropriate accounts and credited to the working-fund account. It is suggested that the corporation take over the balance of cash in working funds by paying the aggregate amount thereof into the Federal cash.

Hospital and other funds for which the railroad is custodian shall be disposed of in accordance with General Order No. 68.

If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lap-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account "(Name of corporation)—Corporate transactions" and on the corporate books should

be charged to an appropriate suspense account and credited to the account "U. S. Government—Corporate transactions."

(b) The value of mileage scrip introduced during Federal control, sold on or prior to February 29, 1920, and honored subsequently, shall be credited on the Federal books to the account "(Name of corporation)—Federal mileage scrip," and entry should be made on the corporate books charging "U. S. Government—Federal mileage scrip." Such scrip collection should not be destroyed until the account has been audited by administration accountants, or unless permission is obtained from the comptroller of the Railroad Administration. If in the establishment of accounts at the beginning of Federal control the mileage liability on the corporate books was made subject to an equitable adjustment when it appeared that no further mileage would be presented, a similar arrangement will be made as to the balance on the Federal books as of February 29, 1920.

6. Allocation of revenues and expenses

(a) Railway operating revenues and taxes shall be allocated to the period of Federal and corporate operations in accordance with the provisions of the standard agreement.

(b) Railway operating expenses, reparation and other claims, hire of equipment and joint facility rents, and any other accounts (except as provided in par. (a)), which constitute the basis of the standard return, shall be allocated with reference to the time when incurred as between the period of Federal control and the period prior and subsequent thereto.

7. Recording Federal control transactions and lap-over revenues and expenses

(a) There shall be entered currently after February 29, 1920, upon the Federal books referred to in section 1 hereof record of all transactions arising out of Federal control.

(b) Bills for accounts collectible and vouchers for accounts payable covering all transactions arising out of Federal operations shall be prepared, respectively, on United States Railroad Administration bill and voucher forms, recorded in the appropriate Federal bill and voucher registers, and charged or credited on the Federal books to the appropriate accounts.

(c) It is desired that transactions arising out of Federal control should not be entered in the corporate books in any manner; likewise it is desired that corporate transactions should not be included in the Federal accounts. However, it may be necessary in exceptional cases, as in the case of interline freight and passenger transactions, to include Federal transactions in the corporate accounts or corporate transactions in the Federal accounts. In such cases the amounts due to or from the Federal management should be credited on the corporate books to a deferred liability account styled "U. S. Government—Federal assets collected" or debited to a deferred

asset account styled "U. S. Government—Federal liabilities paid," as may be appropriate. In the Federal books such amounts shall be included, as may be appropriate, in a deferred liability account styled "(Name of corporation)—Federal liabilities paid" or in a deferred asset account styled "(Name of corporation)—Federal assets collected."

The net amount of cash realized or paid in settlement of lap-over revenues and expenses of the Federal period should be ascertained and appropriate cash settlement made monthly. The amounts thereof shall be entered on the Federal cashbooks and shall be debited or credited as may be appropriate to the accounts "(Name of corporation)—Federal assets collected" or "(Name of corporation)—Federal liabilities paid." Corresponding contra-entries should be made on the corporate books.

(d) If Federal revenue and expense items are reported and included in the revenue or expense accounts stated on the corporate books, as in the case of interline freight accounts, such amounts shall be accumulated in monthly totals from the corporate book records and accounted for as follows:

The total credit to the Federal income accounts should be charged on the corporate books to the appropriate primary revenue accounts and credited to the Federal management through the account "U. S. Government—Federal assets collected."

On the Federal books the same amounts shall be charged to the corporation through the account "(Name of corporation)—Federal assets collected" and credited to the appropriate primary revenue account.

The total debit to the Federal income accounts should be credited on the corporate books to the appropriate expense or other accounts and charged to the Federal management through the account "U. S. Government—Federal lilabilities paid."

On the Federal books the same amounts shall be credited to the corporation through the account "(Name of corporation)—Federal liabilities paid" and charged to the primary operating expenses or other accounts.

(e) In order to preserve the continuity of the income accounts and statistics of carriers, that such income accounts and statistics may be complete, and that there shall not be omitted therefrom amounts which would have been included in the appropriate accounts had there been no Federal control of railroads, at the end of each audit month, the total of the amounts, appearing on the Federal books, charged and credited to the accounts forming the basis upon which the standard return was determined, should be charged and credited on the corporate books to the appropriate primary revenue, expense or income accounts and debited or credited to subaccounts of Income Accounts Nos. 519 and 551, as the case may be, styled "Revenues Federal" or "Expenses Federal," as may be appropriate. No corresponding adjusting entry shall be made on the Federal books of the

individual carriers. Such an entry will be made in Washington based on the aggregate totals of the monthly reports made in response to the provisions of Accounting Circular No. 82.

8. Monthly and quarterly reports

Monthly and quarterly reports in accordance with provisions of Accounting Circulars Nos. 55 and 82 shall be rendered until the accounts on the Federal books are completely liquidated or adjusted, or until otherwise ordered.

The balances on the Federal books in all accounts prefixed with the name of the corporation authorized by this order shall be closed monthly to "Administration ledger control account" in accordance with Accounting Circular No. 82 and, except as to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," shall be reported on Form AC–510 in accordance with Accounting Circular No. 55.

9. General

Where the property was taken over for Federal operation at a date subsequent to December 31, 1917, the date as of which such property was taken over should be substituted for December 31, 1917, wherever mentioned in this order.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States, and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the Comptroller.

Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under the requirements shall be addressed to Mr. Geo. H. Parker, Comptroller.

WALKER D. HINES,
Director General of Railroads.

UNITED STATES RAILROAD ADMINISTRATION,
Washington, June 11, 1920.

GENERAL ORDER NO. 66–A

Paragraph (e) of section 7 of General Order No. 66 is hereby cancelled.

JOHN BARTON PAYNE,
Director General of Railroads.

Contract Custodian's No. 1090.

Agreement between the Director General of Railroads and the Baltimore and Ohio Railroad Company and other corporations. June 24, 1919

PREAMBLE AND RECITALS

This agreement, made this 24th day of June, 1919, between Walker D. Hines, Director General of Railroads, hereinafter called the Director General, acting on behalf of the United States and the President, under the powers conferred by the proclamations of the President hereinafter referred to, party of the first part, and the Baltimore and Ohio Railroad Company, a corporation of the State of Maryland; the Staten Island Rapid Transit Railway Company, a corporation of the State of New York; the Sandy Valley and Elkhorn Railway Company, a corporation of the State of Kentucky; the Baltimore and Ohio Chicago Terminal Railroad Company, a corporation of the State of Illinois; Coal and Coke Railway Company, a corporation of the State of West Virginia; and the Long Fork Railway Company, a corporation of the State of Kentucky, parties of the second part:

Witnesseth that—

(a) Whereas by a proclamation dated December 26, 1917, the President, acting under the powers conferred on him by the Constitution and laws of the United States, by the joint resolutions of the Senate and House of Representatives bearing date April 6 and December 7, 1917, respectively, and particularly under the powers conferred by section 1 of the act of Congress approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," took possession and assumed control at 12 o'clock noon on December 28, 1917, of certain railroads and systems of transportation, including the railroads and transportation systems of the companies and the appurtenances thereof, and directed that the possession, control, operation, and utilization of the transportation systems thus taken should be exercised by and through William G. McAdoo, appointed Director General of Railroads; and

(b) Whereas the Congress of the United States, by an act approved March 21, 1918, hereinafter called the Federal control act, has authorized the President to enter into agreements with the companies owning the railroads and systems thus taken over for the maintenance and upkeep of the same during the period of Federal control, for the determination of the rights and obligations of the parties to the agreement arising from or out of Federal control, including the compensation to be received or guaranteed, and for other purposes, as in said act more fully set out, and authorized the President to exercise any of the powers by said act or theretofore granted him with relation to Federal control through such agencies as he might determine; and

(c) Whereas by a proclamation dated March 29, 1918, the President, acting under the Federal control act and all other powers him thereto enabling, authorized the director general, either personally or through such divisions, agencies, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to agree with the carriers, or any of them, or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States such agreements as may be necessary and expedient with the several carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular the acts and things and to exercise all and singular the powers and duties which in and by the said act, or any other act in relation to the subject thereof, the President is authorized to do and perform; and

(d) Whereas the said William G. McAdoo has resigned as Director General of Railroads and by a proclamation dated January 10, 1919, the President appointed Walker D. Hines Director General of Railroads and authorized him, either personally or through such divisions, agencies, or persons as he may appoint, in his own name or in the name of such divisions, agencies, or persons or in the name of the President, to agree with the carriers or any of them or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President, or in the name of the United States of America such agreements as may be necessary and expedient with the carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient, and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of the systems of transportation taken over by the proclamation of December 26, 1917, as fully in all respects as the President is authorized to do, and generally to do and perform all and singular all the acts and things and to exercise all and singular the powers and duties in relation to such Federal control that the President is by law empowered to do and perform; and

(e) Whereas the Interstate Commerce Commission has certified to the President the amount of the average annual railway operating incomes of the said companies, computed in the manner provided in section 1 of the Federal control act, and the aggregate of which

amounts is twenty-seven million eight hundred and ninety-eight thousand one hundred sixty-one dollars and fourteen cents ($27,898,161.14), subject to such changes and corrections as the commission may hereafter determine and certify to be requisite in order that the accounts and reports of the companies used by the commission as the basis of computing said average annual railway operating incomes may be brought into conformity with the accounting rules or regulations of the commission in force at the time of such accounting, or in order to correct computations based on such accounts or reports; and

(f) Whereas the director general has found that the condition of the company during the test period was so exceptional as to make its standard return plainly inequitable as a fair measure of just compensation and has agreed with the company that the director general shall pay to the company as additional compensation, for the year 1918, the sum of two million one hundred and thirty-two thousand eight hundred and forty-eight dollars ($2,132,848.00), and thereafter two million one hundred and thirty-six thousand nine hundred and thirty-two dollars ($2,136,932.00) during each year, and pro rata for each fractional part of a year of Federal control.

Now, therefore, the parties hereto, of the first and second parts, respectively, each in consideration of the agreements of the other herein contained, do hereby covenant and agree to and with each other as follows:

SECTION 1.—PRIVITY, ALTERATIONS, DEFINITIONS, ETC.

SEC. 1. (a) This agreement shall be binding upon the United States, the Director General and his successors, and upon the companies, and their respective successors and assigns.

Wherever in this agreement the word "company" is used, it shall be understood as meaning the Baltimore and Ohio Railroad Company; the words "affiliated companies" shall be understood as meaning the five other corporations, parties, to this agreement; and the word "companies" shall be understood as meaning the six corporations, parties to this agreement.

The rights and obligations of the companies in this agreement contained are several, not joint. The company owns all the stock, except directors' qualifying shares, of all the affiliated companies.

This agreement shall not be construed as creating any right, claim, privilege, or benefit against any party hereto in favor of any State or any subdivision thereof, or of any individual or corporation other than the parties hereto.

(b) The provisions of this agreement may be altered, amended, or added to by and only by mutual consent signified by instruments in writing signed by the Director General and by some officer of the company thereto duly authorized by the board of directors of the company.

(c) Wherever in this agreement the word "commission" is used it shall be understood as meaning the Interstate Commerce Commission, acting by divisions or otherwise as authorized by law; but any party shall have the right to have the decision of any division reviewed by the commission sitting as a whole.

(d) Wherever in this agreement the words "Federal control" are used to indicate a period of time, they shall be understood as meaning the period from 12 o'clock midnight of December 31, 1917, to and including the day and hour on which said control shall cease.

(e) Wherever in this agreement the words "test period" are used, they shall be understood as meaning the period between July 1, 1914, and June 30, 1917, both inclusive.

(f) Wherever in this agreement the words "standard return" are used, they shall be understood as meaning average annual railway operating income, computed in the manner provided in section 1 of the Federal control act, and ascertained and certified by the commission.

(g) Wherever in this agreement the words "Director General" are used, they shall be understood as designating the person who has been or may from time to time be appointed by the President to exercise the powers conferred on him by law with relation to Federal control, or such agents or agencies as the Director General may from time to time appoint for the purpose; and wherever by this agreement any notice is to be given by the Director General, the same may be given in his name by any subordinate thereto duly authorized.

(h) Wherever the property of any of the companies is referred to in this agreement it shall be understood as including all the property of that company described in paragraph (a) of section 2 hereof, whether owned by or leased to it, and, where the context permits, all additions or betterments thereto or extensions thereof made during Federal control; and as to all such leased property the companies shall have the benefit of and be subject to all the obligations and provisions of this agreement and shall be subject to all duties imposed by law in respect of such leased property.

(i) The descriptive words at the heads of the several sections of this agreement and the table of contents are inserted for convenience merely, and are not to be used in the construction of the agreement.

SECTION 2.—PROPERTY TAKEN OVER

SEC. 2. The railroads and systems of transportation of the company and of its said affiliated companies of which the President has taken over possession, use, control, and operation shall be considered as including:

(a) The following roads and properties:

1. The railroad of the Baltimore and Ohio Railroad Company extending from Philadelphia, Pennsylvania, via Baltimore, Maryland, Washington, District of Columbia, Cumberland, Maryland, Pittsburgh, Pennsylvania, Akron, Ohio, to Chicago, Illinois, and from

Cumberland, Maryland, via Grafton, West Virginia, Wheeling, West Virginia, Newark, Ohio, Willard, Ohio, to Sandusky, Ohio; and from Grafton, West Virginia, via Clarksburg, West Virginia, Parkersburg, West Virginia, Cincinnati, Ohio, to East St. Louis, Illinois; and from Relay, Maryland, to Frederick and Washington Junction, Maryland; and from Weverton to Hagerstown, Maryland; and from Harpers Ferry, West Virginia, to Strasburg, Virginia, and Harrisonburg to Lexington, Virginia; and from Hancock to Berkeley Springs, West Virginia, and Green Spring to Petersburg, West Virginia; and from Garrett to Berlin, Pennsylvania, Rockwood to Johnstown, Pennsylvania, Broadford to Mt. Pleasant, Pennsylvania, and Confluence, Pennsylvania, to Kendall, Maryland; and from Connellsville, Pennsylvania, via Fairmont and Clarksburg, West Virginia, to Weston, Pickens, Sutton and Richmond, West Virginia; and from Grafton, West Virginia, to Belington and Buckhannon, West Virginia; and from Pittsburgh, Pennsylvania, via Wheeling, West Virginia, to Parkersburg, Spencer, Ripley and Kenova, West Virginia; and from Clarksburg to New Martinsville, West Virginia; and from Callery, Pennsylvania, to Mt. Jewett, Pennsylvania, and New Castle Junction to New Castle, Pennsylvania; and from De Forest Junction, Ohio, to Fairport, Ohio, and Valley Junction, Ohio, to Cleveland, Ohio; and from Bridgeport, Ohio, to Lorain and Cleveland, Ohio; and from Belpre to Zanesville, Ohio; Hamden to Portsmouth, Ohio, Blanchester to Hillsboro, Ohio, Lodi to Millersburg, Ohio, Newark to Shawnee, Ohio, Lore City to Cumberland, Ohio, Newark, via Columbus to Midland City, Ohio, and from Sayre to San Toy, Ohio; and from North Vernon, Indiana, to Jeffersonville and New Albany, Indiana, and Louisville, Kentucky; and from Beardstown to Shawneetown, Illinois; and from Cincinnati, Ohio, to Toledo, Ohio, Dayton to Berlin, Ohio, Hamilton to Middletown, Ohio, Troy to Piqua, Ohio, Deshler to West Findlay, Ohio, and North Baltimore to Tontogany, Ohio; and from Arthur Kill Bridge, New Jersey, to Cranford Junction, New Jersey; together with Terminals in the city of New York, New York.

2. The railroad of the Staten Island Rapid Transit Railway Company extending from Arthur Kill Bridge, New Jersey, to South Beach and Tottenville, Staten Island, New York.

3. The railroad of the Sandy Valley and Elkhorn Railway Company extending from Shelby Junction to Jenkins, Kentucky.

4. The railroad and terminal facilities of the Baltimore and Ohio Chicago Terminal Railroad Company in and around Chicago, Illinois, and including lines extending to Chicago Heights, Illinois, and Pine Junction, Indiana.

5. The railroad of the Coal and Coke Railway Company extending from Elkins, West Virginia, to Charleston, West Virginia.

6. The railroad of the Long Fork Railway Company extending from Martin to Weeksbury, Kentucky.

Together with all branches and tracks, trackage, bridge, and terminal rights, and lines of railroad owned by or leased to and oper-

ated by any of the companies as a part of their systems of transportation, including all floating equipment, docks, wharves, warehouses, and water front property, and all other property of the companies, with the appurtenances thereof, whether included in the foregoing list or not, the revenues of which were used, or which, if the property had been then owned by or leased to any of the companies and had then been revenue bearing, would have been used, in computing its standard return.

Each of the companies reserves to itself the benefit of all leases (and of all rents and revenues accruing therefrom) of parts of its right of way, station, grounds, docks, wharves, warehouses, and water-front property, and other property, the revenues from which under the accounting rules of the commission in force during the test period were properly creditable to "miscellaneous rent income" or "miscellaneous income." Each of the companies grants to the director general all its rights to terminate leases of any part of its right of way, yards, or station grounds, docks, wharves, warehouses, and water-front property, and to occupy and use the premises of any such lessee when, in his judgment, the same is required for operating purposes. Each of the companies shall have for its own benefit the right to lease for industrial sites or other purposes such portion of its right of way, yards, or station grounds, docks, wharves, warehouses, and water-front property, or structures thereon as are not required by the director general for operating purposes, and to receive and enjoy the rentals therefrom, subject to the right of the director general to cancel any such lease and to occupy the premises or structures whenever, in his judgment, the same are nuecessary for operating purposes. All expenses connected with any such property heretofore or hereafter leased or otherwise occupied, as in this paragraph provided, including taxes thereon which during the test period were not charged to railway tax accruals, shall be paid by the companies while receiving the revenues therefrom.

(b) All materials and supplies on hand at midnight December 31, 1917.

(c) All balances in the account or accounts representing the total of "Net balance receivable from agents and conductors" as of midnight December 31, 1917.

(d) The cash in the company's treasury on December 31, 1917, belonging to the Baltimore and Ohio Railroad Employes' Relief Department—relief feature, amounting to $596,463.07; and to the Baltimore and Ohio Railroad Relief Department—savings feature, amounting to $2,836,583.90.

SECTION 3.—ACCEPTANCE

SEC. 3. (a) The companies accept all the terms and conditions of the Federal control act and any regulation or order made by or through the President under authority of said act or of that portion of the act approved August 29, 1916, referred to in paragraph (a)

of the preamble to this agreement which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation; and they further and expressly accept the covenants and obligations of the director general in this agreement set out and the rights arising thereunder in full adjustment, settlement, satisfaction, and discharge of any and all claims and rights, at law or in equity, which they or any of them now have or hereafter can have, otherwise than under this agreement, against the United States, the President, the director general, or any agent or agency thereof, for compensation under the Constitution and laws of the United States for the taking possession of their property, and for the use, control, and operation thereof during Federal control, and for any and all loss and damage to their business or traffic by reason of the diverson thereof or otherwise which has been or may be caused by said taking or by said possession, use, control, and operation.

No claim is made by the companies for compensation for the period between noon of December 28 and midnight of December 31, 1917; and the revenues of said period shall belong to the companies, and the expenses thereof shall be paid by them, allocated in both cases as provided in paragraph (b) of section 4 hereof.

(b) The companies, on their own initiative or upon the request of the director general, shall take all appropriate and necessary corporate action to carry out the obligations assumed by them in this agreement or lawfully imposed upon them by or pursuant to the proclamation of December 26, 1917, or by the Federal control act.

(c) The Federal control act being in section 16 thereof expressly declared to be emergency legislation enacted to meet conditions growing out of war, nothing in this agreement shall be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of the companies, or the method or basis of the capitalization thereof, and the recitals or provisions of this agreement shall not be used, as evidence or otherwise, by or against any party hereto in any pending or future proceeding which involves the acquisition or valuation of the property of any of the companies or any part thereof; but nothing in this paragraph shall be taken or construed as affecting the settlement and discharge contained in paragraph (a) of this section, nor as limiting or qualifying any of the provisions of said paragraph for the purposes thereof, nor as limiting the use of this agreement as evidence in any proceeding under this agreement or under the Federal control act.

SECTION 4.—OPERATION AND ACCOUNTING DURING FEDERAL CONTROL

SEC. 4. (a) All amounts received by the director general under paragraph (c) of section 2 hereof and all other amounts whether received from the companies in cash or collected or realized upon by him from current operating assets belonging to the companies or

arising from railway operations prior to midnight of December 31, 1917, shall be credited by him to the companies; and the director general shall, to the extent of the cash so received or realized, pay and charge to the companies all expenses arising out of railway operations prior to January 1, 1918, including reparation claims, and, unless objected to by the company, may pay and charge to the companies any of such expenses, including reparation claims, in excess of the cash so received or realized. Balances of the above accounts shall be struck quarterly on the last days of March, June, September, and December of each year, and the cash balance found on such adjustments to be due either party shall be then payable and, if not paid, shall bear interest at the rate of 6 per cent per annum, unless the parties shall agree upon a different rate; except that the rate of interest on any portion of a balance found due to the companies which is derived from cash in bank to the credit of the companies on interest, shall be adjusted in each case independently of this contract as the parties may agree.

(b) Railway operating expenses, reparation, and other claims, hire of equipment, and joint facility rents shall be allocated with reference to the time when incurred as between the period prior and subsequent to midnight of December 31, 1917, and as between the period of Federal control and the period subsequent thereto. Railway operating revenues shall be allocated as between the period prior and subsequent to midnight of December 31, 1917, in accordance with the established accrual practices of the companies; except that where prior to midnight of December 31, 1917, the companies' part of a service on through business had been completed or carload lots on their own lines had reached destination, the revenue of the companies for such service shall be allocated to them; but as to classes of traffic wherein the opinion of the director general such allocation will involve undue delay or undue absorption of accounting labor, such revenues shall be allocated in accordance with the established accrual practices of the companies. Like methods of accruing and allocating such revenues shall be used at the end of Federal control.

(c) All expenditures made by the director general during Federal control for additions and betterments, exclusive of equipment, or for extensions begun prior to January 1, 1918, shall be charged to the companies, and if the completion of any such addition, betterment, or extension is approved or ordered by the director general, the company shall be entitled under the provisions of paragraph (d) of section 7 hereof to interest on the cost thereof from the completion of the work; but no interest (except to the extent that the same may be allowed and included in the compensation provided for in paragraph (a) of section 7 hereof) shall be due the company upon any such expenditures for work done prior to January 1, 1918. Payments for all equipment ordered or under construction by any of the companies prior to January 1, 1918, but delivered on or after that date, shall also be considered as expenditures made by order or approval of the director general under paragraph (d) of section 7

hereof. Interest during construction payable under this paragraph, and also interest during construction on the cost of any additions, betterments, and road extensions made by the companies or at their expense to the companies' property during Federal control, shall be included in the cost of the work.

(d) Cash receipts or disbursements and other items arising out of transactions which do not enter into or form a part of those used in determining the companies' standard return shall not be received or paid by the director general unless such transactions are negotiated or conducted by his order for account of the companies and with the consent of the company. When moneys are so received or paid by the director general in connection with such corporate transactions they shall be credited or charged to the companies. There shall be an accounting of the amounts due by or to any of the parties under this paragraph at the end of each quarter year of Federal control, and the amount so found due shall be then payable, and if not paid shall bear interest as provided in paragraph (a) of this section.

(e) Any funds taken over as provided in paragraph (d) of section 2 hereof shall be maintained by payments and charges to appropriate operating expense accounts and used by the director general during Federal control substantially in the same manner as prior to January 1, 1918. All sums paid by the director general to maintain pension funds or pension obligations or practices, and all contributions to Young Men's Christian Associations of employees, employees' savings funds, relief funds or associations, reading rooms, or health, accident, or death benefits for employees, shall be treated as a part of railway operating expenses during Federal control.

(f) All salaries and expenditures incurred by the companies during Federal control for purposes which relate to the existence and maintenance of the corporations, or to the properties of the companies not taken over by the President, or to negotiations, contracts, valuations, or any business controversy with the Government or any branch thereof, and which are not specially authorized by the director general, shall be borne by the companies; except that the expenses of valuation now being made by the commission to the extent that they are, in the opinion of the director general, necessary to comply with the valuation orders and other requirements of the commission and to the cooperation of the companies in the making of such valuation, shall be paid by the director general as a part of railway operating expenses. If the company is dissatisfied with the ruling of the director general it may appeal to the commission, whose decision shall be final.

(g) The director general shall furnish for additions, betterments, and road extensions to the companies' property approved or ordered by him any of the materials and supplies taken over under paragraph (b) of section 2 hereof, or purchased by him and held for use in connection with the companies' property, in so far as, in his judgment, he can do so with due regard to his own requirements. Materials and supplies so furnished shall be charged to the companies at cost.

(h) The director general shall at his option be substituted for the period of Federal control in the place of the companies in respect of the benefits and obligations of contracts relating to operation in force January 1, 1918 (including contracts made by subsidiaries for the use and benefit of the companies and the right to abrogate or change and make new contracts with express companies for the period of Federal control), except as to contracts between the companies and subsidiary companies which shall be considered and treated as arrangements or practices; and the director general shall in like manner at his option be substituted for such period in respect of the benefits and obligations of arrangements and practices in force during the test period in regard to fuel, materials, and supplies for the operation of the property described in paragraph (a) of section 2 hereof and of any additions, betterments, and road extensions thereto, obtained from any mine, oil field, or other source of supply owned or controlled by the companies, it being understood that under such arrangements or practices, if availed of by the director general, he shall, to the extent necessary to offset any increase in the standard return growing out of the furnishing by the companies or their subsidiaries, during the test period, of fuel, materials, and supplies under an arrangement or practice at less than the then cost or the then market value thereof for railroad purposes, be charged for such fuel, materials, and supplies a price expressed in dollars or cents per unit below or above the then cost or the then market value thereof for railroad purposes (as the practice of the companies may be been) in the same amount that the prices charged the companies during the test period were below or above the then cost or the then market value thereof for railroad purposes; and at the request of the director general or the companies the prices for fuel or materials supplied between December 31, 1917, and the execution of this contract shall be adjusted on the foregoing basis: *Provided, however*, That a source of supply which the companies had acquired to safeguard their own operations shall not be depleted or reduced for use on other transportation systems, except in cases of emergency to be determined by the director general, in which event the quantity so used on other transportation systems shall be accounted for to the companies at their fair value thereof: *And provided further*, That materials and supplies secured under contracts which the companies had made for their own operations shall, so far as practicable, be used on the companies' property, and that, if used on any other transportation system, materials and supplies of like character shall be furnished by the director general for use in making such additions, betterments, and road extensions as shall be chargeable to the companies, and shall be charged at cost under such contracts.

(i) The director general shall pay, or save the companies harmless from, all expenses incident to or growing out of the possession, operation, and use of the property taken over during Federal control, except the expenses which under this agreement are to be borne by the companies. He shall also pay or save the companies harmless

from all rents called in the monthly reports to the commission equipment rents or joint-facility rents, and all judgments or decrees that may be recovered or issued against, and all fines and penalties that may be imposed upon the companies by reason of any cause of action arising out of Federal control, or of anything done or omitted in the possession, operation, use, or control of the companies' property during Federal control, except judgments or decrees founded on obligations of the companies to the director general or the United States.

(j) Except as otherwise provided in this agreement, the director general shall save the companies harmless from any and all liability, loss, or expense resulting from or incident to any claim made against the companies growing out of anything done or omitted during Federal control in connection with or incident to operation or existing contracts relating to operation; and shall do and perform, so far as is requisite under Federal control for the protection of the companies, all and singular the things, of which he may have notice, necessary and appropriate to prevent, because of Federal control or of anything done or omitted thereunder, the forfeiture or loss by the companies of any of their property rights, ordinance rights, or franchises, or of their trackage, lease, terminal, or other contracts involving a facility of operation; but nothing herein contained shall be construed to require the director general to make any capital expenditure necessary to preserve a franchise or ordinance right not heretofore availed of by the companies. The director general shall also save the companies harmless from any and all claims for breach of covenant heretofore entered into by the companies or by any predecessor in title or interest in any mortgage or other instrument in respect to insurance against losses by fire.

Nothing in this or in the preceding paragraph shall be construed to be an assumption by the director general of or to make him liable on any obligation of the companies to pay a debt secured by a mortgage or any rent under a lease, except rents which during the test period were called in the monthly reports to the commission equipment rents and joint-facility rents and rents which under the accounting rules of the commission in force during the test period were classified as operating expenses; or to make the director general liable to the company in respect of any interest on any bonds issued by or in respect of any obligations of other corporations, or in respect of contributions to make up deficits in the earnings of other corporations, except as payments in respect of such interest or other amounts were classified under said rules as equipment or joint-facility rents, or were a class of payments to be otherwise reflected in railway operating income.

The companies shall, during Federal control, pay the rents of any property held by them under lease or contract, described in paragraph (a) of section 2 hereof, except the rents which during the test period were under the rules of the commission classified as equipment rents or joint-facility rents and rents which were classified as oper-

ating expenses, which excepted rents shall be paid by the director general. If the lease of or right to use any property described in paragraph (a) of said section 2 expires during Federal control, the companies shall, if possible, and if requested by the director general, renew the same; the rental, however, of property in the excepted classes above mentioned shall be paid by the director general. The companies shall pay the same amount of rent as was payable at the beginning of Federal control for other property, the lease of or right to use which is renewed at the request of the director general, but any increases in the rental of such other property shall be paid by the director general.

(k) In carrying out the provisions of paragraphs (a), (b), (c), and (d) of this section and the provisions of section 6 hereof the director general shall not settle any claim by or against the companies against the objection in writing of the president or of any other duly authorized officer of the company. The conduct of all litigation before any court or commission arising out of such disputed claims, or out of operation prior to Federal control, shall be in charge of the director general's legal force and the expense thereof shall be paid by the director general; but the companies may at their own expense employ special counsel in connection with any such litigation.

(l) Nothing in this agreement shall be construed as inconsistent with the provision in section 10 of the Federal control act that no process, mesne or final, shall be levied against any property under Federal control, nor as a waiver by the United States of any claim that might otherwise be made by it that the rights of any State or subdivision thereof or of any individual or corporation have been abrogated or suspended by the taking over of the companies' property or by Federal control.

(m) The companies shall have the right at all reasonable times to inspect the books and accounts kept by the director general relating to their property, or to the operation thereof, and the director general shall during Federal control furnish the companies with copies of the operating reports relating to their property, and as soon as parcticable after the end of each fiscal year shall furnish to the companies a complete list of their equipment as of the end of such fiscal year.

SECTION 5.—UPKEEP

SEC. 5. (a) During the period of Federal control the Director General shall, annually, as nearly as practicable, expend and charge to railway operating expenses, either in payments for labor and material or by payments into funds, such sums for the maintenance, repair, renewal, retirement and depreciation of the property described in paragraph (a) of section 2 hereof as may be requisite in order that such property may be returned to the companies at the end of Federal control in substantially as good repair and in substan-

tially as complete equipment as it was on January 1, 1918: Provided, however, That the annual expenditure and charges for such purposes during the period of Federal control on such property and the fair distribution thereof over the same, or the payment into funds, of an amount equal in the aggregate (subject to the adjustments provided in paragraph (c) and to the provisions of paragraph (e) of this section) to the average annual expenditure and charges for such purposes included under the accounting rules of the commission in railway operating expenses during the test period, less the cost of fire insurance included therein, shall be taken as a full compliance with the foregoing covenant.

(b) The Director General may expend such sums, if any, in addition to those expended and charged under paragraph (a) of this section (subject to the adjustments provided in paragraph (c) of this section) as may be requisite for the safe operation of the property described in paragraph (a) of section 2 hereof, assuming a use similar to the use during the test period and not substantially enhancing the cost of maintenance over the normal standard of maintenance of railroads of like character and business during said period; and the amount, if any, of such excess expenditures during Federal control shall be made good by the companies as provided in paragraph (b) of section 7 hereof.

(c) In comparing the amounts expended and charged under the provisions of paragraphs (a) and (b) of this section with the amounts expended and charged during the test period, due allowance shall be made for any difference that may exist between the cost of labor and materials and between the amount of property taken over and the average for the test period, and, as to paragraph (a), for any difference in use between that of the test period and during Federal control which in the opinion of the commission is substantial enough to be considered, so that the result shall be, as nearly as practicable, the same relative amount, character, and durability of physical reparation.

(d) At the request of the Director General or the company there shall be an accounting of the amounts due by or to any of the parties under paragraphs (a) and (b) of this section at the end of each year of Federal control and at the end of Federal control.

(e) If during Federal control any of the property described in paragraph (a) of section 2 hereof or any replacement thereof or addition thereto or betterment or extension thereof is destroyed or damaged otherwise than by fire or public enemies, and is not restored or replaced by the Director General, he shall reimburse the companies the value of the property destroyed or the amount of the damage at the time of the loss, and the cost of restoration or replacement, or said value or damage, as the case may be, shall be charged to annual railway operating expenses; it being understood that extraordinary losses caused by floods, explosions, train wrecks or accident are included in the matters covered by this paragraph, while

ordinary losses due to such causes are included in the matters covered by paragraph (a) of this section: Provided, however, That if the commission on application of the Director General or the company and after giving due consideration to the practice of the companies during the test period in respect to such matters and to any other pertinent facts and circumstances, determines that it is just and reasonable that the said cost or value shall be apportioned or extended over a period of more than one year, this shall be done, and so much of said cost or value as may be apportioned by the commission over the period subsequent to Federal control, shall be charged to the companies in the final accounting at the end of Federal control and shall be paid by them.

If, during Federal control, any of the property described in paragraph (a) of section 2 hereof or any replacement thereof or addition thereto or betterment or extension thereof is destroyed or damaged by fire, and is not restored or replaced by the Director General, he shall reimburse the companies the value of the property destroyed or the amount of the damage at the time of the fire; and the cost of restoration or replacement or said value or damage, as the case may be, shall be charged to annual railway operating expenses, but the same shall not be considered a charge to such expenses for the purposes specified in paragraph (a) of this section.

In case of any such loss or damage by fire, the Director General shall, if given written notice of the requirements of any mortgages, equipment lease, or trust on the property so destroyed or damaged, make such restoration or replacement, or pay such value or damage, in such way as to meet the requirements of such mortgage, equipment lease, or trust in the same manner as would have been proper in applying the proceeds of insurance on such property if it had been insured by the companies against loss or damage by fire in accordance with the terms of such instruments of lien; and a compliance with the written request of the company in respect thereof shall be a full acquittance of any obligation of the Director General in the premises.

The foregoing parts of this paragraph are subject to the proviso that in case of loss or damage any additions and betterments made in connection with or as a part of the restoration or replacement of property damaged or destroyed and chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, shall be charged to and paid by the companies.

The Director General shall not be liable to the companies for any loss or damage due to the acts of public enemies.

(f) If any additions, betterments, or road extensions are made to the property taken over or any equipment is added at the expense of the companies and with the approval or by order of the Director General during Federal control, he shall expend and charge to railway operating expenses such sums either in payments for labor and

materials or by payments into funds, as may be requisite for the proper maintenance, repair, renewal, retirement, and depreciation of such property until the end of Federal control.

(g) The companies shall have the right to inspect their property at all reasonable times during Federal control, and the Director General shall provide reasonable facilities for such inspection.

(h) If any question shall arise, either during or at the end of Federal control, as to whether the covenants or provisions in this section contained are being or have been observed, the matter in dispute shall, on the application of the Director General or the company, be referred to the commission, which, after hearing, shall make such findings and order as justice and right may require, which shall be final as to the questions submitted and shall be binding on and observed by the parties hereto, except that the Director General or the company may take any question of law to the courts, if he or it so desires.

SECTION 6—TAXES

SEC. 6. (a) All taxes assessed under Federal or any other governmental authority for the period prior to January 1, 1918, including a proportionate part of any such tax assessed after December 31, 1917, for a period which includes any part of 1917 or preceding years and unpaid on that date, all taxes commonly called war taxes which have been or may be assessed against the companies under the act of Congress entitled "An act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917, or under any act in addition thereto or in amendment thereof, and all taxes which have been or may be assessed on property under construction, and all assessments which have been or may be made for public improvements, chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, shall be paid by the companies; but upon the amount thus chargeable to investment interest shall be paid to the company during Federal control at the rate provided in paragraph (d) of section 7 hereof. Taxes assessed during construction on additions, betterments, and road extensions made by the companies with the approval or by order of the Director General during Federal control shall be considered a part of the cost of such additions, betterments, and extensions, and shall, under the provisions of paragraph (d) of section 7 hereof, bear interest as a part of such cost from the date of the completion of such additions, betterments, or extensions. Assessments for public improvements which do not become a part of the property taken over shall bear interest from the date of the payment of such assessment.

(b) If any tax or assessment which under this agreement is to be paid by the companies is not paid by them when due, the same may be paid by the Director General and deducted from the next installment of compensation due under section 7 hereof. If any taxes

properly chargeable to the Director General have been or shall be paid by the companies, they shall be duly reimbursed therefor.

(c) The Director General shall either pay out of revenues derived from railway operation during the period of Federal control or shall save the companies harmless from all taxes lawfully assessed under Federal or any other governmental authority for any part of said period on the property under such control, or on the right to operate as a carrier, or on the revenues derived from operation, and all other taxes which under the accounting rules of the commission in force December 31, 1917, are properly chargeable to "railway tax accruals," except the taxes and assessments for which provision is made in paragraph (a) of this section. The Director General shall pay or save the companies harmless from the expense of all suits respecting the classes of taxes payable by him under this agreement.

(d) If any such tax is for a period which began before January 1, 1918, or continues beyond the period of Federal control, such portion of such tax as may be apportionable to the period of Federal control shall be paid by the Director General, and the remainder shall be paid by the companies.

(e) Whenever a period for which a tax is assessed can not be definitely determined, so much of such tax as is payable in any calendar year shall be treated as assessed for such year.

SECTION 7.—COMPENSATION

SEC. 7. (a) The annual compensation guaranteed to the companies under section 1 of the Federal control act shall be the sum of thirty million, thirty-one thousand, nine dollars and fourteen cents ($30,031,009.14) during the year 1918, and thirty million, thirty-five thousand, ninety-three dollars and fourteen cents ($30,035,093.14) during each additional year, and pro rata for each fractional part of a year during Federal control, subject, however, to any increase or decrease in the standard return hereafter made by the commission as provided in paragraph (e) of the preamble of this agreement.

Compensation paid by the Director General under this agreement, including that provided for in paragraph (d) of this section, or arising from any other source, shall be paid to the company; and the company, after retaining such part thereof as it may be entitled to retain, shall distribute the remainder to the parties entitled thereto.

(b) The said compensation shall be paid to the company quarterly in equal installments on the last days of March, June, September, and December of each year for the quarter ending therewith, except that the first five installments shall be due as of March 31, 1918, June 30, 1918, September 30, 1918, December 31, 1918, and March 31, 1919, respectively, but shall be paid upon the execution of this agreement; but from each installment there may be deducted any amount

then due by the companies under paragraphs (a) and (d) of section 4 hereof, under paragraph (b) of section 5 hereof, and under paragraph (b) of section 6 hereof, and all amounts required to reimburse the United States for the cost of additions and betterments made to the property of the companies not justly chargeable to the United States, unless such matters are financed or otherwise taken care of by the companies to the satisfaction of the Director General, and the Director General may apportion any such amounts to two or more subsequent installments: Provided, however, That said power to deduct amounts due or accruing under paragraph (b) of section 5 hereof and the cost of additions and betterments not justly chargeable to the United States shall not be so exercised as to prevent the companies from paying out the sums reasonably required to support their corporate organizations, to keep up sinking funds for the companies' debts required by contracts in force December 31, 1917, to pay their taxes, to pay rents and other amounts (not chargeable to capital account) properly payable by the companies for leased or operated roads and properties, to pay interest which has heretofore been regularly paid by the companies, and interest on loans issued during Federal control and approved by the Director General, nor shall such deduction be made in respect of additions and betterments which are for war purposes and not for the normal development of the companies, nor in respect of road extensions, nor in respect of amounts due under paragraphs (a) and (d) of section 4 hereof, in cases where the current assets, including materials and supplies, of the companies taken over by the Director General under the provisions of this agreement clearly exceed the current liabilities of the companies paid or assumed by the Director General under said section. In the event of a difference as to the fact whether additions and betterments are for war purposes and not for the normal development of the companies, or as to whether an addition is a road extension, the question may, on application of the Director General or the company, be referred to and determined by the commission.

The power provided in this paragraph to deduct the amount due by the companies for the cost of additions and betterments not justly chargeable to the United States is further declared to be an emergency power, to be used by the director general only when he finds that no other reasonable means is provided by the companies to reimburse the United States, and as contemplated by the President's proclamation and by the Federal control act, it will be the policy of the director general to so use such power of deduction as not to interrupt unnecessarily the regular payment of dividends as made by the companies during the test period.

Overdue installments of compensation, or balances thereof, provided for in this section shall bear interest from maturity at the rate of five per cent per annum, except that if the director general shall, prior to the execution of this contract, have loaned the companies any money, then to the extent of the amount thus loaned, the

installments of compensation overdue at the date of the execution hereof shall bear interest from maturity at the same rate as that charged to the companies on such loans.

(c) During Federal control the companies shall not, without the prior approval of the director general, issue any bonds, notes, equipment trust certificates, stock, or other securities or enter into any contracts (except contracts in respect of corporate affairs and property not taken under Federal control), or agree to pay interest on their debts at a higher rate, or for rent of leased roads and properties a larger amount than the rates and amounts payable as of or required by contracts in force on December 31, 1917. The companies may, however, procure the authentication and delivery to them under any mortgage or trust deed or agreement in force December 31, 1917, of bonds or notes issuable thereunder in respect of additions, betterments, extensions, and equipment or for refunding purposes.

(d) Upon the cost of additions and betterments, less retirements in connection therewith, and upon the cost of road extensions made to the property of the companies during Federal control, the director general shall from the completion of the work pay the company a reasonable rate of interest, to be fixed by him on each occasion. In fixing such rate or rates he may take into account not merely the value of money but all pertinent facts and circumstances, whether the money used was derived from loans or otherwise, provided that to the extent that the money is advanced by the director general or is obtained by the companies from loans or from the proceeds of securities the rate or rates shall be the same as that charged by the director general for loans to the companies or to other companies of similar credit.

(e) From the compensation so received or from other income, if adequate for the purpose, the companies shall make all payments of interest, rents (other than the equipment rents, joint facility rents, and rents classified as operating expenses mentioned in paragraph (j) of section 4 hereof), and other sums necessary to prevent a default under any mortgage or lease of any of the property described in paragraph (a) of section 2 hereof; and if at any time during Federal control the companies, by virtue of any change in the right of possession (subject to the rights of the United States) to any of said property or otherwise, shall no longer be entitled as between themselves and any other person or corporation, not a party to this agreement, to receive the entire compensation herein provided, such compensation shall be apportioned and paid as between those entitled thereto, as justice and right may require.

SECTION 8.—CLAIMS FOR LOSSES ON ADDITIONS, ETC.

SEC. 8. (a) Prompt notice in writing, except as provided in paragraph (d) of this section, shall be given the companies of the making or ordering of any additions, betterments, or road extensions, in-

cluding terminals, motive power, cars, or other equipment to or for the property of the companies costing more than one thousand dollars, with an estimate of the cost thereof. Such notice shall be given before the beginning of the work or the acquisition of the property whenever in the judgment of the director general it is practicable to do so. Within a reasonable time after the completion of the work or the acquisition of the property, a written statement of the final cost thereof shall be given the companies. There shall be furnished the companies, as soon as practicable after the end of each month, a written statement of all expenditures estimated to cost one thousand dollars or less chargeable to investment in road and equipment made during the month, with a brief description of the work done or of the property acquired; and such statement shall constitute all the notice of additions and betterments costing one thousand dollars or less required by paragraphs (b) and (c) of this section. The notices provided in this paragraph may be given to the president of the company unless the company designates some other officer to receive the same, in which event the notice shall be given to such other officer.

(b) Any claim of the companies for loss accruing to them by reason of expenditures for additions and betterments made to their property during Federal control in connection with or as a part of the work of maintaining, repairing, and renewing the companies' property and chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, except such expenditures as are incurred in connection with the replacement of buildings and structures in new locations, may be determined by agreement between the director general and the companies, or, failing such agreement as to the fact or amount of such loss, the questions at issue may, upon the application of the director general or the companies at any time after the filing of the statement of claim hereinafter referred to, be ascertained in the manner provided in section 3 of the Federal control act: Provided, however, That no loss shall be claimed by the companies and no money shall be due them in respect of such additions and betterments upon the ground that the actual cost thereof at the time of construction was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any addition or betterment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination, nor unless the companies, within sixty days of notice to them that the work will be done, shall give the director general notice of objection thereto and shall file with the director general a statement of claim within ninety days after notice of the completion of the work.

(c) Any claim of the companies for loss accruing to them by reason of any additions and betterments which are not made in con-

nection with or as a part of the work of maintaining, repairing, and renewing the companies' property, or accruing to them in connection with maintenance in the replacement of buildings and structures in new locations, or by reason of road extensions, terminals, motive power, cars, or other equipment made to or provided for the property of the companies during Federal control, may be determined by agreement between the director general and the companies, or, failing such agreement as to the fact or amount of such loss, may, by proceedings instituted not later than six months after the end of Federal control, be ascertained in the manner provided in section 3 of the Federal control act: Provided, however, That no loss shall be claimed by the companies and no money shall be due to them in respect of such additions, betterments, road extensions, terminals, motive power, cars, or other equipment mentioned in this paragraph upon the ground that the actual cost thereof at the time of construction or acquisition was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any additions, betterments, road extensions, terminals, motive power, cars, or other equipment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination; nor unless within sixty days after notice to the company of such construction or acquisition written notice is given to the director general by the company that a loss will be claimed in respect thereof. With and as a part of such notice the company shall state the objections to such construction or acquisition as far as reasonably practicable at the time. Nothing in this agreement shall be construed as barring the United States from contending that no loss within the meaning of the Federal control act accrued to the companies by reason of any additions, betterments, or road extensions made during Federal control by order or approval of the director general, if it is made to appear that the companies themselves but for Federal control should in the exercise of sound judgment have made such addition, betterment, or road extension.

(d) Where additions, betterments, or road extensions or terminals, motive power, cars, or other equipment have been made to or provided for the property of the companies during Federal control but prior to the execution of this agreement, the director general shall not be required to give the notice thereof provided for in paragraph (a) of this section and notice by the company of any claim of loss in respect thereto may be given the director general within ninety days after the execution hereof; and such claims shall thereafter be proceeded with in the manner provided in paragraph (b) or paragraph (c) of this section, as the case may be.

(e) The director general shall reimburse the companies for the amount of loss ascertained under this section with a proper adjustment of interest thereon.

(f) The director general shall not acquire any motive power, cars, or other equipment at the expense, or on the credit, of the companies in excess of what in his judgment is necessary, in addition to their then existing equipment, to provide for the traffic requirements of their own systems of transportation; but this provision shall not prevent the director general, after the acquisition of such equipment, from using the same, or any part thereof, on the line of any other transportation system operated by him.

SECTION 9—FINAL ACCOUNTING

SEC. 9. (a) At the end of Federal control all the property described in paragraph (a) of section 2 hereof shall be returned to the companies, together with all repairs, renewals, additions, betterments, replacements, and road extensions thereto which have been made during Federal control, except as any part thereof may have been destroyed or retired and not replaced, in which case the provisions of section 5 hereof shall govern and except that the director general shall not be obliged to restore or replace property destroyed or damaged by the acts of public enemies.

(b) At the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them and also materials and supplies equal in quantity, quality, and relative usefulness to that of the materials and supplies which he received, and to the extent that the director general does not return such materials and supplies he shall account for the same at prices prevailing at the end of Federal control. To the extent that the companies receive materials and supplies in excess of those delivered by them to the director general they shall account for the same at the prices prevailing at the end of Federal control and the balance shall be adjusted in cash.

(c) The total amount of the account "Net balance receivable from agents and conductors" at the end of Federal control may be turned over by the director general to the company. He may also turn over all assets which have accrued out of operation; and the company shall, to the extent of the cash received or realized from such assets, pay and charge to the director general all expenses arising out of railway operations during Federal control, including reparation and other claims, and may, unless objection is made by the director general, pay and charge to him any such expenses, including reparation and other claims, in excess of the cash so received or realized. On the first day of the third month following the termination of Federal control an accounting between the parties shall be had, and so on the first of each third month thereafter. Any balance found due either party shall be payable as of the date on which the account is stated and shall bear interest until paid.

(d) At the end of Federal control there shall be paid to the companies any balance due then remaining unpaid of the cash received from them at the beginning of or during Federal control, together with any unpaid interest which may have accrued upon the same. There shall also be paid to the companies any funds created under the provisions of this agreement except to the extent that such funds may have been properly used under this agreement.

(e) Wherever under any provision of this section there is to be an adjustment of interest, it shall be at the rate of five per cent per annum, unless the parties shall in any case agree on a different rate.

(f) After Federal control no claim by or against the director general shall be settled by the companies against the written objection of the director general or the Attorney General of the United States. The conduct of all litigation before any court or commission arising out of such disputed claims or out of operations during Federal control shall be in charge of the companies' legal force and the expense thereof shall be paid by the companies; but the director general or the Attorney General may, at the expense of the United States, employ special counsel in connection with any such litigation.

EXECUTION

In witness whereof, these presents have, as of the day and year first above written, been duly signed, sealed, and delivered by Walker D. Hines, Director General of Railroads, and duly signed, sealed, and delivered by the Baltimore and Ohio Railroad Company and its five affiliated companies, by their respective presidents, or vice presi dents, and their respective corporate seals affixed hereto, attested by their respective secretaries, such execution and delivery on the part of said companies having been duly ordered and directed by vote of their respective boards of directors on the 28th day of May and 21st and 23rd days of June, 1919, which action on the part of the Baltimore and Ohio Railroad Company had been authorized by a vote of its stockholders at a special meeting duly held on the 21st day of June, 1919, at the company's principal office in the city of Baltimore, and State of Maryland, and such action of the respective boards of directors of said five affiliated companies having been duly authorized by vote of their respective stockholders at meetings duly called and held subsequently to said last-mentioned date, certificates of all

of said meetings, duly attested by the respective secretaries of said companies, have been lodged with the director general.

WALKER D. HINES, [SEAL.]
Director General of Railroads.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE STATEN ISLAND RAPID TRANSIT RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE SANDY VALLEY AND ELKHORN RAILWAY COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

COAL AND COKE RAILWAY COMPANY,
By GEO. M. SHRIVER, *Vice President.* [SEAL.]
Attest:
C. M. HENDLEY, *Secretary.*

THE LONG FORK RAILWAY COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

I hereby certify the foregoing is a true and correct copy.

A. F. FINCHER,
Office Manager,
Director General of Railroads.

28 VIII. *Judgment*

At a Court of Claims held in the city of Washington on the 16th day of February, A. D., 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of eighteen thousand seven hundred and ninety-six dollars and sixty-eight cents ($18,796.68). By the court.

IX. *Proceedings after entry of judgment*

On April 29, 1925, the defendant filed a motion for leave to file a motion for a new trial.

On May 4, 1925, the court overruled the defendant's motion for leave to file a motion for a new trial.

X. *Petition for appeal*

(Filed May 12, 1925)

From the judgment rendered in the above-entitled cause on the 16th day of February, 1925, in favor of claimant, the defendants, by their Attorney General, on the 12th day of May, 1925, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General.

XI. *Order allowing appeal*

It is ordered by the court, this 12th day of May, 1925, that the defendant's application for appeal be and the same is allowed.

29 In Court of Claims of the United States

[Title omitted.]

Clerk's certificate

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the order of the court, and memorandum, entered January 5, 1925; of the amended petition, filed by order of the court; of the re-submission of case; of the findings of fact, conclusion of law and memorandum by the court; of the judgment of the court; of the proceedings after entry of judgment; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 22nd day of May, A. D., 1925.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsed on cover: File No. 31222. Court of Claims. Term No. 499. The United States, appellant, vs. Baltimore & Ohio Railroad Company. Filed May 23d, 1925. File No. 31222.]

○

POSTPONED TO MERITS
MAR 9 - 1925

FILED
JAN 28 1925
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

36

No. 29[illegible]—October Term, 1924. 1925

Pere Marquette Railway Company
v.
The United States.

MOTION TO REMAND TO THE COURT OF CLAIMS.

Alex. Britton,
L. H. Cake,
Counsel for Appellant.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

No. 292- -October Term, 1924.

Pere Marquette Railway Company,

v.

The United States.

Comes now the appellant, Pere Marquette Railway Company, by counsel, and moves that this case be remanded to the Court of Claims for additional findings of fact and for further consideration.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims dismissing a petition. The plaintiff, a carrier by railroad, performed transportation service for the United States Government in 1917. It was paid in full the amount claimed and billed for. Subsequently, in 1918 or 1919, after the railroad had been taken under Federal control, the Government accounting officers disallowed the original settlement with the plaintiff (the corporation) for the said service performed in 1917, and claimed an alleged overpayment (to the cor-

poration) of $3,828.08. To get the money back into the Treasury they deducted the sum of $3,828.08 from accounts due the Railroad Administration for service performed during Federal control. The Railroad Administration accountants promptly charged the deduction back against the corporation. It remains outstanding on the latter's books as an unpaid balance on corporate bill GF-803 (for the service performed in 1917). See finding VI; record, page 7. The plaintiff sued to recover the amount of the deduction.

It was conceded by counsel for the Government and by the court that the deduction was improper and should not have been made, in view of the decisions of the Court of Claims in *Missouri Pacific R. R. Co.*, 56 Ct. Cls., 341, and *Alabama & Vicksburg Ry. Co.*, 58 Ct. Cls., 496. But the suit was dismissed, following the decisions in two other cases, *Louisville & Nashville Railroad Company*, No. 33-A, and *Philadelphia & Reading Ry Co.*, No. 34747, decided November 5, 1923, because it was said there could be no recovery by the corporation of such deductions made from Railroad Adminstration accounts, even though charged back by the Railroad Adminstration to the corporation, first, because the repayment or reimbursement from the corporation to the Railroad Administration was no more than a book or paper transaction, and, second, because the final settlement agreement between the corporation and the Director General was a complete release of all liabilities growing out of or connected with Federal control, including this claim.

Although this case was promptly appealed, in most of the other cases involving the same question motions for new trial were filed and were argued and finally a number of such cases were referred to a special com-

missioner for the taking of additional evidence and the reporting of tentative findings of fact. All those cases were finally re-submitted to the court, October 29, 1924, on findings of fact reported by the special commissioner. January 5, 1925, the court announced its decision, approving and adopting the findings of fact reported by the special commissioner, and entering judgments for the plaintiffs in the cases submitted. Opinions, by Chief Justice Campbell, were filed in the *Philadelphia & Reading* case, No. 34747, and the *Southern Railway* case, No. B-118, in which the court said:

> "The facts now found are materially different from those developed in former hearings and so far as the question of the Director General's settlement is concerned present a substantially different case from that made in the earlier hearings. It becomes necessary to review them."

The case at bar is susceptible of the same proof and findings and should be remanded for additional findings and for disposition by the Court of Claims with the other cases of the same class. Even if the questions of law involved in these cases as a whole are questions which should be or will be decided finally by this court, the present case is not a proper case for the presentation of those questions.

Respectfully submitted,

ALEX. BRITTON,
L. H. CAKE,
Counsel for Appellant.